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BEECHER'S  
CONSTITUTION  
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CIVIL GOVERNMENT  
of the  
UNITED STATES.



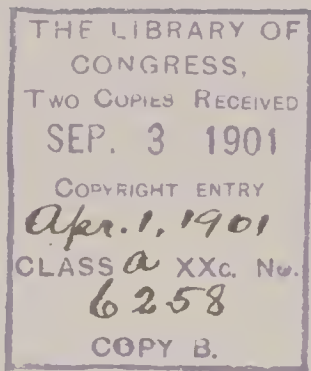
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## PREFACE.

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In introducing this treatise on the Constitution and Civil Government of the United States but few words are necessary. Realizing that for those not versed in the peculiar language of the law, and especially for students of tender years, it is extremely difficult to study the hard, dry facts of a work of this nature, it has been our constant aim to make same as clear and simple as possible, and to avoid all idioms having a purely technical meaning. The greatest care has also been taken in reciting facts accurately; and where a question is still unsettled or in dispute, we have endeavored to answer same in the manner we believe it would be answered by the highest legal authority in case it should come up for final determination, at the same time giving our reasons therefor. Then, too, we have done our utmost to make this work interesting, and yet not include therein any matter that could with propriety be omitted. Experience has taught that by doing thus only can the concentrated attention of most students be commanded and the great end of indelibly impressing upon their minds facts dry and otherwise uninteresting attained. And if we have succeeded in this respect we will feel fully compensated for our trouble.

In conclusion, we note with pleasure the great and growing interest taken by all classes in the study of the fundamental law of the nation. This in our humble opinion is the herald of a still brighter future for the cradle of liberty and the mother of political and religious freedom; and this for the reason that as our people the more and more become acquainted with the functions and duties of a free government they will be in a better and still better position to superintend their proper administering, and thus ever secure to themselves a greater measure of that personal liberty for the attainment of which so much blood has been spilled.

W. J. B.

LIVINGSTON, MONTANA, June 24th, 1901.



## CONTENTS.

	PAGE.
Preliminary .....	I
Preamble, or Enacting Clause.....	10
ARTICLE I.—Legislative Department.....	13
SECTION 1.—Congress.....	13
SECTION 2.—House of Representatives.....	16
Clause 1.—Composition of House of Representa- tives .....	16
Clause 2.—Qualifications of Representatives.....	18
Clause 3.—Apportionment of Representatives and Direct Taxes.....	20
Clause 4.—Manner of Filling Vacancies.....	23
Clause 5.—Power of Impeachment.....	24
SECTION 3.—The Senate.....	25
Clause 1.—Composition of the Senate.....	25
Clause 2.—Classification of Senators.....	28
Clause 3.—Qualifications of Senators.....	30
Clause 4.—Presiding Officer of Senate.....	31
Clause 5.—Other Officers of Senate.....	32
Clause 6.—Trial of Impeachments.....	32
SECTION 4.—Elections and Meetings.....	35
Clause 1.—Time and Manner of Elections.....	35
Clause 2.—Time Congress shall Meet.....	36
SECTION 5.—Separate Powers and Duties.....	37
Clause 1.—Quorum .....	37
Clause 2.—Rules of Each House.....	39
Clause 3.—Records and Journals of Congress.....	39
Clause 4.—Adjournment .....	41

# CONTENTS.

v

	PAGE.
SECTION 6.—Members .....	42
Clause 1.—Compensation and Attendance of Mem- bers .....	42
Clause 2.—Restrictions on Congressmen.....	44
SECTION 7.—Law Making.....	45
Clause 1.—Appropriation Bills.....	45
Clause 2.—How a Bill Becomes Law.....	46
Clause 3.—Joint Resolutions.....	48
SECTION 8.—Powers of Congress.....	49
Clause 1.—Taxation .....	51
Clause 2.—Power to Borrow.....	54
Clause 3.—Power to Regulate Commerce.....	55
Clause 4.—Naturalization and Bankruptcy.....	56
Clause 5.—Coinage, Weights and Measures.....	60
Clause 6.—Counterfeiting .....	61
Clause 7.—Post Offices and Post Roads.....	62
Clause 8.—Copyrights and Patents.....	63
Clause 9.—Federal Courts.....	65
Clause 10.—Piracies, Punishment of.....	66
Clause 11.—Power to Declare War.....	68
Clause 12.—Power to Maintain Armies.....	70
Clause 13.—The Navy.....	71
Clause 14.—Army and Navy Regulations.....	72
Clause 15.—The Militia.....	73
Clause 16.—Organization of the Militia.....	75
Clause 17.—Power to Legislate Exclusively.....	76
Clause 18.—Incidental or Implied Powers.....	79
SECTION 9.—Prohibitions on Congress.....	80
Clause 1.—The Slave Trade.....	80
Clause 2.—Writ of Habeas Corpus.....	81
Clause 3.—Bills of Attainder and Ex Post Facto Laws .....	82
Clause 4.—Levying of Direct Taxes.....	84
Clause 5.—Duties on Exports.....	84
Clause 6.—Commercial Restrictions.....	86
Clause 7.—Appropriations and Accounts of Public Funds .....	86
Clause 8.—Titles of Nobility.....	87

	PAGE.
SECTION 10.—Prohibitions on the States.....	89
Clause 1.—Absolute Prohibitions.....	89
Clause 2.—Conditional Prohibitions.....	91
ARTICLE II.—The Executive Department.....	94
SECTION 1.—Organization.....	96
Clause 1.—Vestment of Executive Power.....	96
Clause 2.—Presidential Electors.....	97
Clause 3.—Election of President and Vice Presi- dent—XII. Amendment.....	100
Clause 4.—Time of Elections.....	104
Clause 5.—Qualifications of President and Vice President .....	105
Clause 6.—Vacancies .....	107
Clause 7.—Salary of President.....	109
Clause 8.—Oath of Office.....	110
SECTION 2.—Powers and Duties of President.....	111
Clause 1.—Sole Powers of President.....	111
Clause 2.—Powers Shared Jointly with Senate.....	117
Clause 3.—Power of Appointment.....	122
SECTION 3.—Other Duties of President.....	123
SECTION 4.—Impeachment of Civil Officers.....	127
ARTICLE III.—The Judiciary Department.....	128
SECTION 1.—Organization .....	129
SECTION 2.—Jurisdiction of Courts.....	131
Clause 1.—Extent of Jurisdiction.....	131
Clause 2.—Jurisdiction of Supreme Court.....	138
Clause 3.—Trial of Criminal Cases.....	139
SECTION 3.—Treason .....	140
Clause 1.—Definition of Treason.....	140
Clause 2.—Punishment of Treason.....	142
ARTICLE IV.—Relations of the States.....	143
SECTION 1.—State Records.....	143
SECTION 2.—Relations of States to the Inhabitants of Other States.....	145
Clause 1.—Privileges of Citizens of Each State.....	145



## CONTENTS.

vii

	PAGE.
Clause 2.—Fugitive Criminals.....	146
Clause 3.—Fugitive Slaves.....	147
SECTION 3.—New States and Territories.....	147
Clause 1.—Admission of New States.....	147
Clause 2.—Territories .....	150
SECTION 4.—Federal Guaranties to the States.....	152
ARTICLE V.—Amendments to the Constitution.....	154
ARTICLE VI.—Miscellaneous .....	156
Clause 1.—Prior Debts and Engagements.....	156
Clause 2.—Supremacy of the Constitution.....	157
Clause 3.—Oath of Office.....	158
ARTICLE VII.—Ratification of the Constitution.....	159
Amendments to the Constitution.....	161
AMENDMENTS I-X.—Bill of Rights.....	162-178
Article I.—Freedom of Religion, of Speech and of Assembly.....	162
Article II.—Right to Bear Arms.....	164
Article III.—Quartering Soldiers.....	165
Article IV.—Searches and Seizures.....	166
Article V.—Security to Life, Liberty and Prop- erty .....	167
Article VI.—Trial Rights of Accused Persons...	171
Article VII.—Jury Trial in Common Law Suits...	174
Article VIII.—Excessive Bail, etc., Forbidden....	176
Article IX.—Personal Rights not to be Con- strued Strictly.....	176
Article X.—Powers Reserved by the People....	177
AMENDMENTS XI. and XII.—Miscellaneous.....	179, 180
Article XI.—Suing of States in U. S. Courts.....	179
Article XII.—Election of President.....	180
AMENDMENTS XIII., XIV. and XV.—Abolition of Slavery.	181-187
Article XIII.—Abolition of Slavery.....	181
Article XIV.—Reconstruction Provisions.....	181
Section 1.—Citizenship and Its Privileges....	181
Section 2.—Apportionment of Representatives.	183

	PAGE.
Section 3.—Disabilities of Rebels.....	184
Section 4.—Status of Public and Rebel Debt...	186
Section 5.—Congressional Power to Enforce this Article.....	186
Article XV.—Equal Suffrage.....	187
Appendix .....	189

BEECHER'S

CONSTITUTION AND CIVIL GOVERNMENT

OF

THE UNITED STATES.

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PRELIMINARY.

In commencing the study of the science of government there are two questions that naturally arise in bold relief to the mind of the student. The first of these is, "What is government?" The second is, "Why are governments instituted among men?" Numerous and various answers may be given to the former question, but in the sense herein used the term government may be defined as "that form of fundamental rules by which the members of a body politic regulate their social actions, and the administration of public affairs, according to established constitutions, laws and usages;" or it may be defined as the right or power to control, to direct and to exercise authority over human-kind, or such a portion thereof as have associated themselves together for the purpose of mutual protection and advancement into a certain designated and defined community or body politic. At the present writing there are, and for a period of time "whereof the memory of man runneth not to the contrary" there have been, many forms of government in operation among the races of men, chief among which in



power and influence may be classed monarchies, both limited and absolute, and democracies, both pure and representative. The government of our own nation, and of which we are shortly to study, is, in theory at least, a representative democracy, or, in other words, a republic. This form of government we fondly believe to be the most consistent with the common rights of man and with the ever onward course of progress and civilization. In a republic all the citizens, as such, are equal before the established constitution and laws, and no person can rightfully exercise authority over another but by virtue of power constitutionally or otherwise given by the whole community, which authority, when exercised, is in theory and generally in effect the act of the entire community. Its basic principle is that in the people or members forming it reposes the sovereignty, and that this sovereignty is exercised by them through their accredited representatives, it being impracticable, if not quite impossible, for all the people in a great and populous community or body politic to meet together and exercise their sovereignty in person.

To the second question, "Why are governments instituted among men?" the most fitting answer, as well as the most appropriate, can be found in the preamble of the Constitution of the United States itself. From it we learn that governments are instituted for the purpose of establishing justice, insuring domestic tranquility, organizing society to carry on public works, providing for the common defense and promoting the general welfare and happiness of the people. It will be readily recognized as a self-evident truth that in order to protect the weak from the strong and from the selfish, in order to preserve the sanctity of the home and the ties and relations emanating therefrom, and in order to apprehend the common enemies of mankind and bring them to justice, it was necessary that some artificial power be created which could accomplish these ends. Hence, the establishment of governments among men. The whole aim

of government is to protect man from his kind, and to further his moral and pecuniary welfare. To accomplish this desirable end the most effectually, the voices and the experience of the ages have taught that the government established must be one in which the people, and not one man or a body of men, are the sovereigns. A government in kind other than this is generally tyrannical, unjust and often capricious. Such proved to be the case with the monarchical form of government which held sway over the thirteen original colonies prior to the commencement of the war of the Revolution, and on the ruins of which, after many weary years of bloodshed, rapine and murder, our own glorious form of government was builded.

It is assumed that the student is entirely familiar with the immediate causes of the Revolutionary War, through the medium of which the old original thirteen colonies were freed from the tyrannous domination of the mother country, and also with the ideas and longings which naturally grew up in the hearts of the people thereof and made them look on any form of government which did not originate with and evolve on themselves with hatred, aversion and distrust. Hence, we shall only record here the various steps which were taken from the time the inhabitants of these colonies first drank to the dregs the inspiring nectar of freedom, of liberty and of the equality of man, to the date of the adoption and ratification of the Constitution of the United States.

At the time the colonies threw off the yoke of the mother country in open rebellion, and boldly launched themselves on the sea of fate, they were, in effect, thirteen separate and distinct nations, each complete within itself, and having but few and unimportant political relations with each other. The only ties that held them together and caused them to work in concert were the loose and flimsy ties of a common kindred, a common object and a common fear. But to accomplish even this effectually it at once became apparent

that some sort of a central governing institution must be established to which each of the colonies could send a certain number of delegates to look after her individual interests, and enable the entire thirteen to act in harmony and wage a systematic war against the common enemy. Hence, on the 5th day of September, 1774, at the city of Philadelphia, these delegates met together in accordance with the original object and organized themselves into a body which has since been known and designated as the Continental Congress. From the date of the convening of this body until the adoption of the Articles of Confederation, hereinafter more particularly mentioned, on the 1st day of March, 1781, it was "clothed with undefined powers for the general good," in theory, but in reality it had no power or authority to enforce the observance of its deliberations, except such power as the passive or common consent of a majority of each of the colonies enabled it to exercise. Had it not been for the fact that the delegates forming it were exceptionally wise and good men, and that their acts were reasonable and justified by the stern necessity of the hour, the congress must surely have broken up in disorder, and thus spread confusion and the rankling seeds of jealousy and distrust throughout the entire thirteen colonies. But luckily such was not the case. Instead, however, out of this small beginning gradually grew up the colossal structural work of the government of a mighty nation, which exercises not passive but actual power.

Thus have we a brief outline of the reason or reasons for the calling of the Continental Congress and of the authority it exercised. But during its existence, and prior to the adoption of the Articles of Confederation, a very important occurrence took place which we cannot allow to pass without special notice. This was the adoption of that immortal document, the Declaration of Independence, on the 4th day of July, 1776. From the date of its adoption really can be



reckoned the birth of the nation. When the colonists first took up arms against England they did not dream of separating themselves permanently from the domination of the mother country. Their only object was to secure the redress of certain grievances and the granting of certain privileges which were denied them. But as if by magic there suddenly grew up in the hearts of the people, imperceptibly, perhaps, at first, but well-defined later on, an unquenchable desire to rid themselves forever from the domination of their foreign oppressor. In accordance with this desire the Continental Congress, on June 11th, 1776, appointed a committee to draft the document which made our forefathers free. On this committee, and forming part of it, were three well-known characters in American history, Thomas Jefferson, Benjamin Franklin and John Adams. The document itself, with the exception of a few words of correction, was the work of Mr. Jefferson, and is characteristic of the man, breathing freedom at every pore. The student will find a copy of this brilliant and remarkable document in the appendix of this work, and we strongly recommend that it be studied carefully in this connection and given much thought, for its eternal principles are those which should permeate the very souls of the young manhood and young womanhood of the nation, and thus continually add new and fresh fuel to liberty's fire, and cause her thousand beacon lights of hope to burn ever more brightly.

On the same date that a committee was appointed to draft the Declaration of Independence one was also appointed to formulate or frame a plan on which to form a government having more power and authority than the Continental Congress, as it was felt by everybody, and especially by the members of this Congress, that such a government was absolutely essential to secure to the people the protection requisite to their needs, as well as the blessings of a liberty which is guarded by wise and just laws.

This committee reported the result of its deliberations somewhat over a month later. The report, after being slightly modified, was agreed to by the Continental Congress on the 15th day of November, 1777, whereupon it was submitted to the several colonies to be ratified by their legislatures. This report, thus agreed upon and submitted, was known as the Articles of Confederation. On March 1st, 1781, Maryland, the last of the thirteen colonies to authorize her delegates in Congress to sign the articles, instructed them to do so, after which event they went into full force and effect.

The government organized under the Articles of Confederation, was much weaker and quite different from that as organized under the Constitution, as we shall see later on. It was merely a loose Confederation of States, each of which still retained its own independent sovereignty. Practically, it was nothing more than a friendly agreement entered into between the states to recognize the authority of the central government, but which authority each of them could reject or disobey at any time it was so minded. These articles made no provision for any other branch of government than that of Congress itself, and it was to consist of but one house. Its members were paid by their respective states, and were elected for one year, but could be recalled at any time. Each state was allowed from two to seven members, according to its population, but it only had one vote in the congress. This Congress had power to "treat with foreign countries, to send and receive ambassadors, to determine peace and war." It could also borrow money "on the credit of the United States;" fix the standard of weights and measures, and of the fineness of coin; establish and regulate post-offices and post roads; ascertain and appropriate an amount of money sufficient to defray the expenses of government; decide as to the size of the standing army, and request each state to furnish the number of men for such purpose required of it; and to appoint a committee consisting

of one member from each state to sit during the vacations of Congress and transact the executive business. It was also a court of last resort in the settlement of all difficulties arising between the states.

In addition to conferring these rights on the Congress, the Articles of Confederation also denied to the states certain powers inherent in them. Thus, they were forbidden to enter into any treaty with each other or with a foreign nation, or to engage in war except upon the consent of Congress first had and received. Neither were they allowed to keep vessels of war or a standing army in times of peace, unless same was authorized by Congress.

The palpable and glaring defects in these articles were not long in presenting themselves. Under them Congress had power to declare war, and apportion to each state the number of men it should furnish, but it could not compel them to raise a single troop; it had power to borrow money on the faith of the United States, but it had no power to pay a dollar back; it had power to make and conclude treaties with foreign nations, but it had no power to enforce their observance; it had power to coin money, but none to purchase a pennyweight of bullion; it had power to determine and appropriate money for the defraying of the expenses of government, but could not raise a single dollar. The natural result of this utter impotency and weakness of the confederate government was humiliating, to say the least. Its entire inability to enforce the observance of the treaties it had concluded with foreign nations brought upon it alike the scorn and ridicule of its enemies and the dissatisfaction and distrust of its friends. Each state regulated its own commerce, and hence for the want of a uniform system of duties and imposts and of consistent commercial regulations in the different states, the commerce of the entire country was severely prostrated, if not quite ruined. The inability to secure the payment of its obligations destroyed its stand-



ing among the nations of the world. The value of the money it issued was scarcely nominal. Petty jealousies were arising between the states on every hand, and even the existence of the very government itself was in some parts of the country threatened by open rebellion.

While matters were in this deplorable condition, and the government of the Union itself seemed about to collapse and dissolve under its own weight, the Congress seemingly awoke from the lethargic, degraded and demoralized condition into which it had fallen, and, on Feb. 21st, 1787, upon the suggestion of a commission appointed for this purpose by five of the states, passed a resolution recommending that a convention of delegates be appointed by the several states, to meet in Philadelphia on the second Monday in May, 1787, "for the sole and express purpose of revising the Articles of Confederation." In answer to this recommendation, with the single exception of Rhode Island, delegates from all the states met at the appointed time and place, and by May 25th the convention had organized, with George Washington as its chairman, and began to put into execution the object that gave it birth. It did not take the convention long, however, to discover that it would be useless to attempt to amend the Articles of Confederation. They were so palpably and radically defective that the promulgation of an entirely new plan of government—one which provided for the establishment of a much stronger central power—was necessary in order to preserve the Union from utter and speedy dissolution. Hence, it was determined to discard the old articles and form an entirely new document by means of which their mistakes would be cured and their deficiencies supplied. On the 17th of September, 1787, this document was completed, engrossed and signed by all the members of the convention, save three. It was then, together with a resolution stating how the proposed government should be put in operation and an explanatory letter, transmitted to Congress,



which, on the 18th day of September, in said year, ordered that it as thus framed, with the resolutions and letter concerning the same, "be transmitted to the several legislatures in order to be submitted to a convention of delegates chosen in each state by the people thereof, in conformity to the resolves of the convention." This document was called the Constitution of the United States, and went into effect on the first Wednesday in March, 1789, all of the original states, with the exception of South Carolina and Rhode Island, having ratified it previous to that time, and they ratifying the same shortly thereafter.

The Constitution itself is one of the most remarkable, if not the most remarkable, document that has ever been penned. To be sure, it is not entirely original, as portions of it bear a striking resemblance to the *Magna Charta*, or "Great Charter," of England, which was long years before practically wrung from the reluctant hands of King John, but it is remarkable for the wonderful foresight exercised by its framers. This can be plainly seen from the fact that, although the conditions and requirements of the nation have become almost completely revolutionized since the Constitution went into effect, yet through all this change and time has it been unnecessary to substantially alter it. It is remarkable, also, for its terseness and for the beauty of its language and the elegance of its expressions. It has passed under the severe scrutiny of perhaps the best literary critics of the ages, yet from each ordeal it has emerged triumphant and with new laurels.

Under the Constitution, instead of a Congress of one house only, as was the case under the Articles of Confederation, the government is divided into three branches or departments, each of which was formed and constituted in such a manner as to be a check or watch dog upon the others, thus very materially lessening the chances of fraud and corruption and the enactment of hasty or vicious legislation.

These departments or branches are the Executive Department, the Legislative Department and the Judicial Department, and the powers of each of them are such as its name would indicate. Taken together, we believe, they form the most perfect government that has ever been devised by man, and therefore their founders deserve the deepest gratitude and thankfulness that can be bestowed by a world on bended knee.

Having now at least a slight idea of the occurrences and causes which led up to the formation and adoption of the Constitution of the United States, it therefore boots us to proceed with the careful study of that remarkable instrument, and note with admiration and interest the beauty, the symmetry and the lack of friction of the government existing under it.

### PREAMBLE, OR ENACTING CLAUSE.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution of the United States of America.

The preamble or introductory clause of the Constitution of the United States is of the utmost importance, and hence should be carefully dissected and digested, for the reason, as has been heretofore stated, that it gives the objects, purposes and intents for which the Constitution was originally framed and adopted. Its every phrase is laden with the inspiring perfume of freedom's own. The noblest sentiments of the Creator and the highest and best ideas of man are embodied in it. It is indeed a fitting prelude to an instrument such as is the Constitution we all love so well, and which we can ever the more and the plainer see is the real bulwark of the liberties we now enjoy.

Let us glance at its opening phrase and determine who it is that is establishing this Constitution of the United States. Listen, "We, the people of the United States." Ah, it is the people who are the establishers, is it? 'The doctrine of the divine right of kings does not find much encouragement here. It is the people who are the sovereigns. From them emanates all authority, all law. They are the true and only sources of power. And these people are "The People of the United States,"—not people of different states constituting a loose confederacy, as was the case under the Articles of Confederation, but the people of one and the same nation, acting harmoniously together as brothers, and with the same ideas of national life.

Now, why did these people of the United States establish this Constitution?

*First*, because they wished "to form a more perfect union." They had become heartily sick of and disgusted with the weak government which had existed, or attempted to exist, under the Articles of Confederation, and they now wanted one that had ample power to assert and maintain its independence, yet one so bridled and saddled that it could not become despotic and wantonly trample in the dust their God-given privileges and rights.

*Second*, because they desired to "establish justice." Under the Articles of Confederation there had been no national judiciary. The courts of the several states were the only judicial tribunals then in existence, and they so flagrantly discriminated in favor of their own citizens, and against foreigners and citizens of other states, that it at once became apparent to the framers of the Constitution and to the people that in order to hold these state courts in check and deal out even and exact justice to the citizens of all the states, and also to provide a means for the interpretation of the Constitution and the laws of Congress, that a national judicial system must be established.

*Third*, because it was their wish that "domestic tranquillity" be insured. Under the Articles of Confederation the states were continually quarreling with each other. Matters were, indeed, in a deplorable condition. The citizens of the different states, except when a common fear brought them together to accomplish the same end, were constantly mixed up in some petty wrangle. Even rebellion itself was, in many parts of the country, raising its horrid front. At that time domestic tranquillity was a thing little experienced, but much desired. Hence, to secure it, it was determined to take certain sovereign rights away from all the states and repose them in the national government.

*Fourth*, because they wished to "Provide for the common defense." They saw plainly that if a government wishes to command the respect of the nations of the world and of its own citizens, it must have the power to raise, equip and maintain an army and navy. The impotency of the government in this respect under the Articles of Confederation was a wholesome lesson to them, and one which was well heeded. Yet they were exceeding careful to see that this two-edged power should be used for the benefit of all the people, or a majority thereof, and safe-guarded it in such a manner that it cannot well be abused.

*Fifth*, because they wished to "Promote the general welfare," this being the principal object for the establishment of their government. And well did they provide for it, as we shall learn later on. Every provision of the Constitution has that end in view. And,

*Sixth*, because they desired to "Secure the blessings of liberty to ourselves and our posterity." What a fitting climax to the preamble of the Constitution of the United States! These people and their forefathers had learned from the hard book of experience what it was to be under the yoke of a foreign oppressor. Many of them had left their distant homes in order that they might be able to live



and die under liberty's beneficent sway. The war of the Revolution had mainly been fought for that liberty for which the people yearned. Throughout the long and weary years of bloodshed that followed the signing of the Declaration of Independence it was the love of liberty that glowed in the hearts of the citizen-soldiery, and spurred them onward to grander and nobler achievements. And should this prize so dearly won now be surrendered? No, indeed! The whole aim now was to secure it, and this was done by giving to the general government only such powers as were necessary for the continuance of national sovereignty and independence—such powers as were necessary for its own preservation,—and retaining in the states their inherent powers of home rule and self government. With what success the labors of our forefathers were crowned in this respect, let the loving hearts of a grateful people proclaim.

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## ARTICLE I.

### THE LEGISLATIVE DEPARTMENT.

#### SECTION I.

##### CONGRESS.

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.

As has been hereinbefore stated, the functions of government under the Constitution are divided into three separate and distinct branches or departments, the Legislative Department, the Executive Department and the Judicial Department. This was done because the hard earned experience of the centuries had taught the people that if all the functions of



government are vested in one person, or body of persons, such person or body of persons would invariably in the end usurp and betray the almost unlimited power and confidence reposed in them by the people. "Unlimited power reposed in the hands of a few begets tyranny" was their motto. And so they determined to create several departments, each one to be a check to and a jealous overseer of the power exercised by and the acts of the others. The first of these branches or departments given attention in the Constitution, and the one which occupies the most space, is the Legislative Department. Perhaps this is because the framers of that document looked upon it as the most important branch, for surely no law can be enforced by the Executive Department or interpreted or applied by the Judicial Department until it has first been made by the Legislative.

It will be further noticed that this Legislative Department, in contra-distinction to that existing under the Articles of Confederation, consists of two houses, instead of but one only. The reason for this departure was because the people, although vehemently denying that they still harbored any love for the mother country, yet still did adhere tenaciously to the better institutions, customs and usages of the land they had forsworn. This can be plainly seen from the fact that they established for their basic law the common law of England, and it is such even to this day in all the states and territories, with the single exception of the state of Louisiana, which at one time having been under the sway of the Latin state of France, still retains the civil law given it by that nation as its basic. Hence, it does not at all seem wonderful that the fathers should pattern their Legislative Department after that of England, which consists of a House of Commons and a House of Lords. But in doing so they were very careful not to adopt the same terms to designate each of the houses, but instead termed one the

House of Representatives, which corresponds practically to the English House of Commons, and the other the Senate, which in all important respects corresponds to the English House of Lords.

Another reason for creating these two chambers was because the several states were still very jealous of each other, and each was afraid that the others might obtain an advantage over it in the government that was to be formed. The larger states, as was but natural, insisted that they should be represented in the Congress according to the ratio their respective populations bore to the entire population of the Union, while the smaller ones maintained that they should have an equal voice in the deliberations of Congress with their larger sisters, as was the case under the Articles of Confederation. So, in order to reconcile these conflicting claims it was determined to compromise the matter and create two separate and distinct houses, the members of one of which, the Senate, were to be elected by the states, each state to have an equal number, while those of the other, the House of Representatives, were to be elected by the people in proportion to the population of the several states.

In forming these two chambers of the national legislature, the framers of the Constitution, perhaps, "builted better than they knew," for many are the advantages which have been derived therefrom, chief among which is that under this arrangement a bill must be considered at least twice, once in each house, before it can be passed, and thus tend to prevent hasty and ill considered legislation. Then, too, the members of each house being elected for different terms and in different ways, those of the Senate would be the more likely to represent the interests of their respective states the best, while those of the House of Representatives, being closer to the people, would the more likely represent the wishes and desires of the people.

## SECTION 2.

## HOUSE OF REPRESENTATIVES.

## CLAUSE 1.

## COMPOSITION OF HOUSE OF REPRESENTATIVES.

The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors of each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

This chamber of the national Congress was probably called the House of Representatives for the reason that it is supposed to "represent" the people, while the members of the other chamber represent the states, and it was the next best appellation that presented itself after that of the House of Commons.

Instead of the terms of the members of this house being for one year, as was the case under the Articles of Confederation, it will be noticed that they are extended to two years. The reason for this is because it was discovered that a one-year term is often too short to enable a member to become acquainted with the rules and workings of the house, and thus be in a position to act affirmatively and to the best advantage in securing the passage of important or needed legislation. Also, a one-year term is too short to enable the member to give the subjects to be legislated on adequate study, or to enable him to discover what new legislation the good of the people demands. This change in the length of the term was reasonable and has been fraught with much good to the country, as an annual change in the membership of this house of Congress would keep the great business interests and enterprises of the nation in continual uncertainty and upheaval.

The term of the first Congress commenced at noon, on the 4th day of March, 1789, and that of each succeeding Congress on the 4th day of March, at noon, in each odd-numbered year, and continues for two years. The Congress which is in power now, and which was elected in the autumn of 1900, is therefore known and designated as the LVII Congress, and its successor, which will come into power on March 4th, 1903, will be known as the LVIII Congress. Each Congress has two regular sessions and as many extra sessions as the President of the United States, in case of unusual emergency, sees fit to call, or which may have been provided for by law. The first session of each Congress is called the "long session," because it convenes on the first Monday in December of each odd-numbered year and may continue in session until the first Monday in December in the next succeeding year, if it so chooses. The second term is called the "short session," because it convenes on the first Monday of December in each even-numbered year, and can continue only until the 4th of March, at noon, in the year following.

The members of this branch of the Congress are elected by the people or electors of the several states; that is, by those whom the laws of each state designate as voters. So we see that the matter, with the exception of a slight restriction, is left entirely to the judgment of the several states. This restriction is that before an elector can vote for members of the lower house of Congress he must be qualified to vote for members of the lower house of his own state legislature. Hence, it happens that in a few of the states females over the age of twenty-one are, in connection with the males over that age, qualified electors to vote for members of the national House of Representatives. But in none of them are minors, or persons under that age, qualified electors for either. Neither are insane persons, nor idiots, nor



criminals convicted of felony and not pardoned, nor Indians not taxed. Also, in some of the states, persons otherwise qualified are disqualified if they are unable to read and write the Constitution of the United States. Thus, we see that a voter qualified to vote for members of the lower house of Congress in one state may be disqualified to do so if he removes to another. This is because both the national and state constitutions refuse to admit that every citizen has a *right* to vote, and thus have a direct voice in the management of the government under which he lives. If this was otherwise, then women and children would be entitled to vote equally with men. On the other hand, this power is regarded as a *privilege*, which privilege becomes a right only after it is granted and not before.

## CLAUSE 2.

### QUALIFICATIONS OF REPRESENTATIVES.

No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of the state in which he shall be chosen.

We have just considered the qualifications required of those who are entitled to vote for members of the United States House of Representatives. Now we are called upon to study the qualifications required of the Representatives themselves.

Before a Representative can take his seat in the House he must be at least twenty-five years of age. This wise provision was inserted for the reason that in all the states no man can exercise the privilege of voting until he "comes of age," or is, in other words, twenty-one years old. If on the occurrence of that event he could aspire and be elected to the House of Representatives, it can be plainly seen that his



youth and inexperience with the workings of government would, in most cases, entirely unfit him for the duties and responsibilities of his important office. A probation of four years for this purpose was considered little enough.

A person must also be a citizen of the United States for the period of seven years before he can qualify as a Representative. From this we see that he need not be a natural born citizen, but may be a naturalized one. A person born in this country, and who does not give up his residence in it, is of course a full-fledged citizen from the moment of his birth, but one who was born a citizen or subject of a foreign nation and wishes to become a citizen of the United States, with the exception of an honorably discharged soldier, who may become one after a year's residence, must live in the United States for a period of not less than five consecutive years. Hence, a naturalized citizen cannot become a member of the lower house of Congress until he has resided in this country continually for the period of twelve years, five to become a citizen and seven afterwards. This is so required because it was deemed best not to allow any one a seat in this branch of the Congress who has not become thoroughly familiar with our institutions and our laws, as well as to overcome, in some measure at least, the political ideas of the land of his birth, and the twelve-year period of probation was thought sufficient to attain that end.

It is also required that a Representative must be an inhabitant of the state from which he is chosen. This restriction was imposed in order that the person elected might have the welfare of his state at heart. However, the Constitution does not designate the length of time he must be an inhabitant of such state, but leaves the matter to the respective states themselves. In most of them the time is one year. Neither does it designate in which part of the state he shall reside, in case such state has been divided

into more than one congressional district under the authorization of Congress. Propriety, however, and the best interests of the people would suggest that he be a resident of the district from which he is chosen.

Besides the restrictions imposed by this clause on Representatives there are two others, the first of these being that no Representative in Congress shall hold any other office under the United States (Article I., Section 6, Clause 2), and the second is that no person shall be a Representative who, having previously taken the oath as such to support the Constitution of the United States, shall have engaged in rebellion against the same, or abetted their enemies, giving them aid or comfort, unless such disability is removed by a two-thirds vote of each house (Amendmt. XIII., Section 3). The discussion of both of these is at this time foregone until they can be reached in their proper order.

### CLAUSE 3.

#### APPORTIONMENT OF REPRESENTATIVES AND DIRECT TAXES.

(Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons). The actual enumeration shall be within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration can be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

That portion of this clause which is contained in parentheses has been amended by the second section of the XIV. Amendment to this Constitution, and hence at this time and

place need be given but slight attention, as its chief value is mainly historical, except so far as it relates to direct taxes.

It will be noticed that this clause, among other things, authorizes the levy by the national government of direct taxes; that is, poll taxes and taxes on real and personal property. But direct taxes, when levied, must be uniform throughout the United States, and this for obvious reasons. Only in several instances, the last of which was in 1862, has the government levied these direct taxes. At the present time it is almost impossible to do so, for the reason that the expenses of levying and collecting them would be so large as to bring forth the indignant protests of the people, the national government not being in a position to compel the states to levy and collect the direct taxes for it. The usual manner of raising revenue for the national government is by indirect taxation.

The provision that the Representatives shall be apportioned among the several states according to the number of their respective inhabitants is still retained, with some modifications, in the XIV. Amendment, Section 2, in the discussion of which it will be properly considered. In this connection it is only necessary to remark that one of the main principles over which the Revolutionary War was fought was that "Taxation without representation is tyranny," and hence the importance of and the necessity for this provision.

At the time of the adoption of this Constitution all the states except Massachusetts were slave-holders, though in the North the number of slaves held was very small. When it came to apportioning the number of Representatives each of the states should have in Congress the large slave-holding states wished their slaves counted as part of the number of their inhabitants, while those having but few slaves wished them excluded. The matter was settled by a compromise, in which it was agreed that "three-fifths of all other per-

sons," meaning three-fifths of all persons not free, for the framers of the Constitution did not like to tarnish that instrument with the use of the word "slave," should be taken into consideration in making the apportionment. But this part of the Constitution is now repealed and obsolete, and hence needs no further consideration.

The Constitution also provides that an actual enumeration of the inhabitants of the United States shall be made within the period of three years from and after the date of the first meeting of Congress. This enumeration was called the census. The first census was taken during the year 1790, and one has been taken during every tenth year since then. The census is at the present time taken under the supervision of the Department of the Interior, the head officer of the Census Bureau being styled the Superintendent of the Census. Under him is a state Superintendent of the Census appointed for each of the states. These state Superintendents each divide their respective states up into numerous small census districts, over each of which they appoint a person called a Census Enumerator, whose business it is to enumerate the people residing in his district, and determine all other things required by the Interior Department. By these means the government is ever enabled to keep a fairly strict account of its population, and hence always maintain an equalized representation in the lower house of Congress.

The Constitution, in order to limit the number of Representatives, and thus prevent the House from becoming such a cumbrous body that important and needed legislation would be retarded and in many cases entirely lost, provides that there shall be not more than one Representative for every thirty thousand inhabitants. However, it will be noticed that it does not limit the number of inhabitants over thirty thousand which may constitute a congressional



district and be entitled to one Representative. Hence, Congress has from time to time, as the population of the Union increased, and with the same object in view as had the framers of the Constitution when they declared that there must not be more than one Representative for every thirty thousand, required each Representative to "represent" a larger and ever larger number of inhabitants, until at the present time the number has been increased to a trifle over 186,000, the entire population of the nation now being entitled to 386 Representatives. The provision that each state shall have not less than one Representative, no matter how small its population may be, was inserted in order to give even the smallest state a voice in the deliberations of this branch of the Congress.

#### CLAUSE 4.

##### MANNER OF FILLING VACANCIES.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

A vacancy in the House of Representatives is usually caused by the death, insanity or resignation of the member, though it may be caused by his expulsion for various reasons, such as conduct unbecoming a gentleman, immorality, or a wanton disregard for the sanctity of the law. When, from any of these causes, or otherwise, vacancies do occur in any of the states, the executive authority thereof, that is, the Governor, or in his absence or incapacity, the Acting Governor, must issue writs of election to fill the same. This is done by ordering a special election to be held. The order is published in the various newspapers of the district in which the vacancy occurs, and designates the date on which such special election shall be held. The member thus chosen holds office only for the unexpired term of his immediate predecessor.



## CLAUSE 5.

## POWER OF IMPEACHMENT.

The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

This clause gives the House power to choose its own Speaker and such other officers as may be necessary to maintain its organization and facilitate the transaction of its business. The Speaker is the presiding officer of the House and probably receives his title in imitation of the Speaker of the British House of Commons, though this is doubtful. He is elected by a ballot from among the members, and may be removed from the chair at any time the House sees fit to do so. Each Congress elects its own Speaker, and his duties are prescribed by the rules of the House. These duties are, to a great extent, precisely similar to those of the president or chairman of a body of individuals congregated together and organized for the accomplishment of some end.

Of the "other officers," the most important are the Clerk, who has a large number of assistants, the Sergeant-at-arms, the Door-keeper and the Postmaster. The former, as his title would indicate, is the keeper of the records of the House and the recorder of its proceedings. The Sergeant-at-arms bears the same relation to the House as a sheriff does to a court of record. He acts under the direction of the Speaker, and his duty is to keep order and serve all writs and processes of the House. The other officers perform the duties which their respective titles indicate. None of them can be members of the House, although they are chosen by it and serve during its pleasure, which is usually for the entire term of each Congress.

The House also has the very important power of impeachment. That is, if the President or Vice President of the United States, or any of the civil officers thereof, have been guilty of such official misconduct as in the opinion of the House should disqualify them from longer holding their respective offices, or have been guilty of treason or bribery, or some other crime against the United States or any of them, or against individuals, the House of Representatives has sole power to enter a formal statement, in writing, against such officers or any of them, which statement must specify the matters and things with which he is charged. This written charge or statement is called "Articles of Impeachment," and in presenting it the House acts in the same capacity as does a grand jury. But although the House has the sole power to enter articles of impeachment against such civil officers of the United States as it may think should be removed from office, yet it has no power to try such officers. This power is delegated to the Senate of the United States, alone, as we shall see later on.

### SECTION 3.

#### THE SENATE.

##### CLAUSE 1.

##### COMPOSITION OF THE SENATE.

The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for the term of six years, and each Senator shall have one vote.

The people of the United States were, at the time the Constitution was formed, very democratic in thought and deed. They hated and despised everything that had the least semblance to a title, and hence it does not at all seem strange that although they were willing to pattern their

legislative branch after that of England, yet when it came to choosing a term to designate that chamber of the national legislature which corresponds to the English House of Lords, they utterly refused to adopt that name, as the very word "Lord," meaning a member of the House of Lords, was distasteful to them; but instead they turned their eyes longingly to the institutions of ancient Rome, and there from the crumbled remains of her past greatness dug up a term which, being suitable in meaning, they straightway adopted. The word "senate," or "senatus," was the appellation given to that branch of the government of Rome having supreme legislative authority, and was derived from the Latin word "senex," signifying an old man. And who is there that can gaze on an aged man without a feeling of reverence and awe, when the thought of his experiences, his conservatism and the dignity of his position in society flashes through the mind? And so the choosing of the word "senate" as a name for this branch of the national Congress was indeed a happy thought, for it carries with it the dignity, the wisdom and the veneration of extreme old age, and commands the respect that is due to the counsels and admonitions of men grown hoary in the service of their country.

Having now considered the derivation of the term "senate," and noted how fittingly appropriate it is as the name of the body to which it is applied, we can at this time turn our attention to its composition. It consists of two members from each state, no matter how small or large that state may be. The reason for this arrangement, it will be remembered, is because the smaller states feared the larger ones would have too much power in the formation of the legislative branch if the representation was in proportion to the population, and hence the concession to them that each state should be equally represented in the Senate.

The members of this chamber are elected by the state legislatures of their respective states for the term of six years, and in such a manner that one-third of their entire number go out of office on the 4th day of March in every odd-numbered year. They are elected upon receiving a majority on joint-ballot of the votes cast by the legislature of the state they are to represent. This plan was decided upon for two reasons, real or imaginary. The first of these was because it seemed proper that, as the Senators are supposed to represent the states, they should be elected by the states; the second is because it was thought that the election of Senators by the state legislatures would create a closer bond of fellowship and good feeling between the states and the national government. Although these may have been of sufficient weight at the time the Constitution was framed to warrant the election of senators in this manner, yet at the present time the wisdom of said reasons is gravely doubted, and it is very probable that in the not distant future this provision of the Constitution will be amended to the extent that Senators shall be elected by a direct vote of the people, instead of by the state legislatures. The provision that Senators shall hold office for the term of six years was inserted in order to give them dignity and independence, and to place them above the whims and caprices of their constituents. Then, too, it was thought that by requiring their term of office to be for six years, and thus make a continuous body of the Senate, at least two thirds of the members of which are in office at the convening of each new Congress, would give the assurance of stability and steadfastness to the councils of the nation, and thus tend to secure for them confidence at home and respect abroad.

The requirement that each state shall have two Senators and that each Senator shall have one vote was inserted for the reason that if one of the Senators of a state should be-



come sick or incapacitated, which often occurs, the state would still have a voice in the Senate hall; whereas, if each state had but one senator, or two senators and but one vote, it would at times be entirely without representation. This, of course, may occur even under the present arrangement, but its possibility is very much lessened.

## CLAUSE 2.

### CLASSIFICATION OF SENATORS.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as near as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year; so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive authority may make temporary appointments until the next meeting of the legislature, which shall then fill the vacancies.

As has been heretofore stated, the object for providing for the vacation of only one-third, or nearly so, of the seats in the Senate every second or odd-numbered year was to secure to that body at all times a large number of experienced members, and thus secure stability and conservatism in national affairs. But the way this object was first accomplished is somewhat unique and bears a striking resemblance to a lottery. When the original states sent their Senators to the first Congress it was undetermined which should belong to the first class, which to the second, and which to the third. So, in order to conform to the requirements of the Constitution, it was decided to draw lots to determine which should hold office two years from March 4th, 1789, which four years, and which six. Accordingly, slips of paper equal to the entire number of Senators chosen were placed in a receptacle, one-third of which slips were marked

first class, one-third second class, and one-third third class. The Senators, then, on the 15th day of May, 1789, each drew out a slip, the marking on which determined whether he was to serve six years, four years or two years, but pains were taken that the terms of the two Senators from the same state should not expire on the same date, in order to prevent such state from changing both of her Senators at the same time. In this way it was amicably and to the satisfaction of all the Senators decided which ones should go out of office on March 4th, 1791, which on March 4th, 1793, and which on March 4th, 1795. And even to the present day, whenever a new state is admitted into the Union, its first Senators determine by this curious method to which of the two classes next in order each of them shall belong, so as to maintain as nearly perfect equalization between the three classes as possible. The successors of the first Senators from each state, no matter to what classes they might belong, hold their respective offices for the term of six years, however. Thus, at or before his term of office expires the state legislature of the state which is represented by the two-year senator elects his successor, which successor does not hold office for two years, but for six years; and this is the case also with Senators elected to succeed the four-year and six-year Senators. By virtue of this arrangement it will be seen that one-third of the Senators go out of office every second and odd-numbered year, thus making a continuous body of the Senate, in conformity to the spirit and requirements of the Constitution.

When a vacancy takes place in the Senate, which vacancy may be occasioned for reasons similar to those which may cause a vacancy in the House of Representatives, the legislature of the state from which the member vacating was elected, if it is in session, must proceed to elect another member, which member thus elected holds office for the

unexpired term of his predecessor. But if the legislature is not in session at the time the vacancy occurs, then the Governor, or Acting Governor, may, though he is not required to do so, appoint a person to fill such vacancy. This person thus appointed, however, does not hold office for the unexpired term, as is the case with vacancies filled by the legislature, but only until it can meet in regular session and elect his successor.

### CLAUSE 3.

#### QUALIFICATIONS OF SENATORS.

No person shall be a Senator, who shall not have attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of the state from which he shall be chosen.

It will be perceived that the qualifications of members of the Senate are slightly more stringent than those of the House of Representatives, which is accounted for from the fact that the greater responsibilities of their office would suggest that their qualifications also be greater. In the main, however, the reasons for requiring that members of the House have certain qualifications before they can take their seats applies equally to members of the Senate, and as they have been fully given (see Section 2, Clause 2, this Article), we shall not here take the time and space to again enumerate them. We will only add that before a naturalized citizen is eligible to the Senate he must reside in the United States continually for not less than fourteen years, five to become a citizen and nine afterwards, and that on Senators as well as Representatives are placed the additional qualifications required by Clause 2, Section 6, of this Article, and by Section 3 of the XIV. Amendment. Also, that the age of eligibility to the Senate of Rome was precisely the same as that to our own Senate.

## CLAUSE 4.

## PRESIDING OFFICER OF THE SENATE.

The Vice President of the United States shall be president of the Senate, but shall have no vote unless they be equally divided.

Instead of allowing the Senate to choose a presiding officer from among its own members, as is the case in the House, we here note that it is the Vice President of the United States who shall be President of the Senate. This was so provided because it was feared that if the Senate was allowed to select its presiding officer from among its own members, this would give the state which the Senator chosen represented unequal power over the other states, as a presiding officer always exercises more or less influence over and above that exercised by an ordinary member. Then, too, the Vice President had nothing to do, and was, as a means of precaution, elected to fill the office of President should the same become vacant by death or otherwise. Hence, in order that he might not be entirely idle, but on the other hand be in constant training for the duties of the Presidency, in case he should be called to fill that important office, by continually assisting in the transaction of the executive business of the Senate, it was determined to assign him this position.

The duties of the Vice President, as presiding officer of the Senate, are practically the same as those of the Speaker of the House of Representatives, which we have recently noted, with the important exception that he has no vote, unless the members of the Senate are equally divided on some matter that is up before it, or are in a "dead-lock," as it is called, in which case he has the casting vote. Nor can he participate in the debates of the Senate; nor can he appoint committees.



## CLAUSE 5.

## OTHER OFFICERS OF SENATE.

The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

As is the case in the House, the Senate is also empowered to choose all its officers, with the exception of the one presiding. These "other officers" are practically the same as those of the House and have the same duties.

But in addition to this it is empowered to choose a President *pro tempore* (for the time being), whose duties are the same as those of the Vice President, in case he is absent or called upon to assume the duties of the Presidency. The President *pro tem.* is chosen from among the members themselves, and hence has a vote, and can debate on any question before the Senate, but in the event of a tie, like the Speaker of the House, he has no casting vote. This officer can be removed at any time the Senate sees fit to do so, but when once elected he is usually allowed to retain his office until his Senatorial term expires. In order that the Senate might not be without a presiding officer in case the Vice President is absent or filling the office of President, it is the general practice of that officer to vacate his chair at the beginning of each Congress, to permit the Senate to choose its President *pro tem.*

## CLAUSES 6 AND 7.

## TRIAL OF IMPEACHMENTS.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be under oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment, according to law.

We have learned that the House only has the sole power of impeachment (Section 2, Clause 5, this Article); now we learn that the Senate only has the sole power to try such impeachments as have been determined upon and ordered by the House. This is done in the manner following: The House, having decided that a certain civil officer should be removed, appoints a committee to notify the Senate of that fact, and that it will, in due time, exhibit particular articles of impeachment against him and make good the same. This committee is also empowered to demand that the Senate try such officer. The House then appoints another committee, which usually consists of five members, to prepare the articles. After they have been prepared and adopted, and five persons, members of the House, have been appointed to conduct the prosecution before the Senate, it is notified that the articles of impeachment are ready to be presented. The Senate thereupon notifies the House when it will receive the articles, upon the presentation of which it causes a summons to be issued to the officer accused, requiring him to appear and file his answer within a certain time to the charges made against him. After this is done the Senate appoints a date when it will sit as a Court of Impeachment to judge the accused. At that time evidence for and against the defendant is taken, the Senators acting in the capacity of both judge and jury, and the five members appointed by the House for this purpose as prosecuting attorneys. When the evidence is all in, the matter is fully argued as in a court of law, after which the Senate passes its judgment, which must be either one of acquittal,

or that the person accused be removed from office, or that he be both removed and prohibited from holding any further office of honor, trust or profit under the United States. But the judgment must be one of acquittal, unless at least two-thirds of the members present vote for the defendant's removal, or removal and disqualification. And the members of the Senate, when sitting as a Court of Impeachment, must be under oath, in order that the responsibility and the solemnity of the occasion may be impressed upon their minds.

In all instances when the Senate sits as a court of impeachment the Vice President presides as at other times, with the single exception of when either he himself or the President is to be tried, in which event it is provided that the Chief Justice of the United States Supreme Court shall preside. This is because, as the Vice President is interested in the result, it would be a flagrant bid to fraud and corruption if the rule were otherwise. Then, too, on such a grave and momentous occasion it seems but fitting and propriety that the presiding officer should be one so experienced in the law, and whose office carries with it so much dignity and respect as does that of the Chief Justice, the second highest officer in the land. Perhaps the student has been wondering why the Senate was at all given the power to try impeachments, when it would seem with propriety to belong to the province of the courts. But the framers of the Constitution did not take propriety much into consideration, except when they could do so without endangering the future welfare of the people. They aimed entirely at results. They at once saw that to drag political contests such as these are before the courts of law would have a tendency to degrade the latter and not secure a better trial for the former than could be had before the Senate, as politics and justice seldom if ever go well hand in hand. Politics is, to a greater or less extent, always partial, while justice should be impar-

tial. Then, too, a judge is himself subject to impeachment. Hence, the wisdom of this provision.

An impeachment trial is not a criminal trial, but a political trial. Hence, if an officer is being impeached for the commission of an act which is a crime against the United States or any of them, he may also be tried, convicted and punished by the proper criminal courts, and this whether he is convicted or acquitted by the Senate.

Thus far only seven impeachment trials have taken place before the Senate of the United States, resulting in one dismissal, one removal, one removal and disqualification, and four acquittals.

## SECTION 4.

### ELECTIONS AND SESSIONS.

#### CLAUSE 1.

##### TIME AND MANNER OF ELECTIONS.

The times, places and manner of holding elections for Representatives and Senators shall be prescribed in each state by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the place of choosing Senators.

For over fifty years after the Constitution was adopted the Congress did not exercise this power given it to prescribe the time and manner of holding the elections of its members, but in 1842 it passed a law to the effect that the territory from which each of the Representatives is elected shall be in a compact and contiguous body. This was done to prevent an abuse which had grown up in some of the Eastern states, called "Gerrymandering," the object of which was to divide such states into the number of districts authorized by Congress for Representatives, "in an unfair and unnatural way, with a view of giving the political party



making the division or apportionment an advantage over its opponent." Since that time Congress has also provided that elections for Representatives shall be by ballot, and that they shall be held on the first Tuesday after the first Monday of November, in each even-numbered year, but further than this it has not gone. Therefore, all other regulations as to the times, places and manner of holding elections for Senators and Representatives are left to the several states, to be exercised by them until superseded by congressional law. But in no case can Congress designate the places where Senators are to be chosen. This prohibition was inserted in the Constitution in order to enable each of the states to select the site of its own capital or seat of government without Federal interference, as Senators are always elected at the places where the several state legislatures meet, they being the seats of government of such states. Had it been otherwise, Congress might change the capital of a state to whatever locality therein it chose, and as often as it saw fit to do so, thus depriving the people in this respect of their dearly beloved right of home-rule.

## CLAUSE 2.

### MEETINGS OF CONGRESS.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

The power given Congress by this clause to change the date on which it shall convene yearly has as yet not been exercised, and there are no indications at the present time that it ever will be.

The reason that Congress was required to meet at least once each year is because it was believed that such a course would prove a great stumbling block to tyranny and in-

justice. But although there must be one session held yearly, yet there may be more than one. If there is, it is usually termed an "extra" or "special" session, and may be provided for by law beforehand, or called by the President in case of extraordinary emergency.

## SECTION 5.

### SEPARATE POWERS AND DUTIES.

#### CLAUSE 1.

##### QUORUM.

Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

The power given each House by this clause, to be the judge of the elections, returns and qualifications of its own members, means only that each House has the right to determine who is and who is not entitled to membership in it. It quite frequently happens, especially in the House, that the seat of a member is contested by one who believes he has a better right to it than he who received the certificate of election; or that certain persons duly elected are not qualified to hold seats in the Congress because of the restrictions of the Constitution; in which cases this power is exercised. The object of giving each House this peculiar power is to enable it at all times to retain and maintain its purity and independence, in order that it may command the respect and confidence of the people. But although this power is very beneficent and should be retained at all hazards, yet it has often been abused for unworthy purposes. This is generally the case when the members of either House are

nearly evenly balanced between the parties, the one having the majority seating its fellow partisan in spite of justice or right. This condition is indeed deplorable, especially when we consider that the decision of each House is final and cannot be reviewed by the other House or by the courts, and it is to be hoped that some remedy will be found for it at a not distant day.

The provision that a majority of each House is sufficient to constitute a quorum to do business is a very wise one, and is one which has been patterned after almost universally. Were it provided that a smaller number should constitute a quorum for the transaction of business, it can be readily seen that an active minority would be given too much power; while on the other hand, to require more than a majority would make it possible for a minority to retard and even prevent legislation. But it sometimes happens that a majority are not present to do business. When such is the case the minority may meet and adjourn from day to day in order to keep up the organization of the House to which they belong, and may, under the rules thereof made in pursuance to the latter part of this clause, compel the attendance of absentees who are not sick, or who have not been excused by their respective Houses, by causing them to be arrested and brought to the seat of government by the Sergeant-at-arms or one of his deputies, as no member has a right to be absent unless excused. But it is not usual to impose a fine on the members whose attendance is thus enforced, except so far as the payment of the costs are concerned. The reason for reposing this power in the minority is to raise a barrier against the majority purposely absenting themselves in order to retard or prevent the transaction of business.

## CLAUSE 2.

## RULES OF EACH HOUSE.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member.

Each House early availed itself of the permission given it by this clause to form a set of rules for its own government, as it was soon discovered that they were necessary to check undue haste, and to prevent confusion and delay, as well as to expedite the transaction of business. These rules are based upon and patterned after those in vogue in the English Parliament, commonly called parliamentary rules. To a great extent they are the same as those used by most legislative, deliberative, business and social bodies the world over, and their use has been fraught with much good.

Neither House has often availed itself of the power to punish or expel any of its members, although when it does do so it is generally for a good reason, especially in the event of an expulsion, as the requirements of a two-thirds vote is likely to guard against unreasonable prejudice or partisan influence. The last member to be expelled from either House was Brigham Roberts, congressman-elect from Utah, by the House of Representatives of the LVI. Congress, for the reason, as was claimed, that he being a believer in the doctrines of Mormonism, still had a plurality of wives, and therefore was a bigamist and a breaker of the established law of the land.

## CLAUSE 3.

## RECORDS AND JOURNALS OF CONGRESS.

Each House shall keep a journal of its proceedings, and, from time to time, publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either House shall, at the desire of one-fifth of those present, be entered on the journal.



The requirement that both Houses shall make their proceedings public, except such a portion thereof as should in their judgment be kept secret, is the part of wisdom, as nothing will so prevent misrule and stimulate the legislators onward to higher and nobler aims as will the fact that the eyes of the nation, and of their individual constituents especially, are constantly upon them. None realize this better than do the congressmen themselves, and hence they have even gone further in the matter of publicity than is required by the Constitution, in that it is the constant practice to permit spectators and newspaper reporters to witness and report the proceedings of both Houses, and also to authorize members to have their speeches printed and distributed at the public expense. It is a rare event for the House to have a secret session, but the Senate, in the transaction of its executive business, still very often holds what is called an "executive" or "star chamber" session, the proceedings of which are kept secret.

To determine whether any measure before either House of Congress has passed or not, it is first usual to resort to the vote by *acclamation*; that is, all members in favor of the measure, when the question is put by the presiding officer, answer "aye," while those opposed answer "no." If a vast majority answers one way or the other, it is easy to decide, and thus save much time. But if the vote by acclamation is so nearly balanced that the presiding officer is unable to decide, or one or more of the members call for a division of the House, then resort is had to what is called a *rising vote*. This is done by having all those in favor of the measure rise and remain standing until they are counted, after which they take their seats, and those opposed rise and are counted. These methods of voting suffice for ordinary occasions, but it often happens that an important question is before either House, in regard to which it is advisable to have a record kept of the way each member voted. When

such is the case, and at least one-fifth of the members present desire it, then still another method of voting, known as the *viva voce*, or yea and nay method, is resorted to. This is done by calling the roll of the House and entering the way each member voted opposite his name, thus keeping a permanent record thereof. The result of this latter method is very beneficent, as it makes the members exceedingly careful how they vote, for it reminds them that should they at any time come up for re-election, and have voted contrary to the wishes of their constituents on any measure, such fact will almost invariably be brought up against them to their disadvantage.

#### CLAUSE 4.

#### ADJOURNMENT.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

The reason for the insertion of this provision is self-evident. If either House could adjourn without the consent of the other for an unlimited time, the legislative department of the United States would at times be almost useless, if not quite so. But the two Houses concurrently may adjourn for any length of time, or to any other place than the one in which they are sitting. Since the seat of government was established at Washington, however, Congress has never met at any other place than in the capitol building located there.

The sessions of Congress may now be ended in one of three ways:

*First*, by limitation; that is, the terms of Congress beginning on the first Monday of December in each odd-numbered year must end on the first Monday of December

in the next succeeding year, and the sessions beginning on the first Monday of December in each even-numbered year must end on the 4th day of March, at noon, in the year following, the terms of all the representatives and one-third of the Senators expiring at that time.

*Second*, by the concurring agreement of both Houses to adjourn until a time certain, or for an indefinite time, which is called adjourning *sine die*. And

*Third*, if the two Houses fail to come to an agreement as to the time of adjournment, the President may declare them adjourned for an indefinite time or to a time certain.

## SECTION 6.

### MEMBERS.

#### CLAUSE 1.

##### COMPENSATION AND ATTENDANCE OF MEMBERS.

The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

One of the chief fundamental principles of the government of the United States is that both the rich and the poor shall be equal in the eyes of the law; and that the poor, so far as it is concerned, shall have an equal chance with the rich to aspire and be elected to offices of honor, trust and profit under it. For that reason the Constitution provides that the members of the Congress of the United States shall receive a salary, to be determined by law, so that the poorest of the nation's citizens, if he be eligible and worthy, may sit

in her legislative halls ; whereas, if no salary was paid, only the wealthy could afford to do so. This salary is fixed by the Congress itself, subject only to the approval of the President, and the restriction that it must not be increased or diminished during the terms of those fixing it. At the present time it is \$5,000 per annum for Senators and Representatives alike, together with their mileage at the rate of ten cents per mile in going from and returning to their several homes from the seat of government by the nearest route, with the exception that the Speaker of the House and the President *pro tem.* of the Senate, when the latter is acting as its presiding officer, each receives a salary of \$8,000 per year and his mileage.

The reason that Congressmen are privileged from arrest as provided in the clause we are considering is because their respective states or districts are deeply interested in having them attend at all times to the duties they were elected to perform, and hence should not be deprived of their voices and votes because of some evil-minded or frivolous reason. Where the crime with which they are charged is grave, however, such as treason, felony or breach of the peace, the members of Congress are not privileged from arrest to any greater extent than is an ordinary person. This exception to the rule was made on the ground of public policy, as a Congressman guilty of such charges should not be permitted to retain his seat in the highest law-making body in the land.

Members of both Houses, while speaking or debating in their respective Houses, are also permitted to have full and untrammelled sway in the expression of their opinions, and this without fear of being brought to account for the same in an action for slander prosecuted in a suit at law, unless they become too outrageously offensive, when they are usually called to account by the House of which they are



members. The reason for this provision is to protect and encourage members who have the welfare of their country at heart in exposing any corruption in the workings or management of the government, no matter how rich and influential the doers thereof may be, without fear of being held personally liable therefor. It should be understood, however, that this privilege extends only to members while speaking or debating on the floors of their respective Houses. If they slander or libel anyone in any other place, they are amenable to the courts in the same manner and to the same extent as any common citizen or resident.

## CLAUSE 2.

### RESTRICTIONS ON CONGRESSMEN.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

This restriction was imposed in order to destroy in the minds of all ambitious and selfish members any hope of ever receiving personal pecuniary gain out of some *civil* office that may be created, or the salary of which may be increased, during their terms of office, and thus remove from them the temptation to create new and perhaps useless offices with large salaries for their own benefit, or to increase beyond a reasonable amount, for a like reason, the salaries of offices already in existence. Also, to protect Congressmen from undue influence on the part of the President, who, upon their conferring some favor on him, might promise to give them the appointment to certain offices which it is contemplated to create, or the salary of which may be raised, in compensation therefor. But this clause does not prohibit

members from being appointed to such offices as soon as their terms have expired; nor does it prevent a member from resigning his seat and accepting the appointment to an office which was created, or the salary of which was raised, previous to the date of his election; nor does it prohibit him from resigning his seat and accepting the appointment to a *military* office, even if the same was created, or the salary thereof was increased, during his term of office and for his special benefit.

In addition, this section further provides that *civil* officers of the United States, during their terms of office, cannot be members of the Congress. The reason for the insertion of this was to appease the fears of many that the Executive Department of the government, if its officers were allowed to be members of Congress, would be in a position to exercise undue influence in the councils of the nation, and thus gradually strengthen itself at the expense of the people.

## SECTION 7.

### LAW MAKING.

#### CLAUSE 1.

##### APPROPRIATION BILLS.

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

The expenses of conducting the government must be met, whether this be done by levying taxes directly or indirectly, and in either event the people are the ones who must finally pay them. Hence, as the Representatives are nearest the people, and can therefore the more readily be held to account in case they needlessly increase the expenses of government, the

wisdom of this provision becomes plainly apparent. But even under such circumstances the framers of the Constitution met obstacles in their paths in the shape of the jealousies of the smaller states, for they feared that, as their voices in the House would necessarily be small, they would be treated unjustly; so in order to allay their fears in this respect, it was decided to give the Senate power to propose or concur in amendments to such bills as may have originated in the House for the purpose of raising revenue sufficient to satisfy the demands of government, as in this branch of the Congress the smaller states have an equal voice with the larger ones.

#### CLAUSE 2.

##### HOW BILLS BECOME LAWS.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approves he shall sign it, but if not he shall return it, with his objections, to the House in which it originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excluded) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevents its return, in which case it shall not be a law.

From this clause we note that a bill may become a law in any one of three ways: First, by having passed both Houses and been signed by the President; second, by having passed both Houses, been vetoed by the President and returned to the House in which it originated, together with the President's objections thereto, and then been passed over his veto by a two-thirds majority of the members of

each House present and voting ; and third, by having passed both Houses, been delivered to the President, and failed in receiving his signature thereto within ten days from the date it was delivered to him, Sundays excluded, unless the Congress is not in session on the tenth day, in which event it does not become a law.

The veto power, although on its face seemingly inconsistent with republican institutions, yet from its having been exercised by the rulers of all civilized nations from time immemorial, has become to be looked upon as an inalienable prerogative belonging to the nation's head. And why should it not be considered thus when we call to mind the fact that as it is the President's duty to enforce the laws, he from his having great experience in such matters, would seem the likeliest to know whether certain bills, if they became laws, would result beneficially to the country or *vice versa*? But this is not the only end attained by reposing the veto power in the hands of the President. Congress at times tries to encroach upon the executive power given the President by the Constitution, in which events he can effectually check them by the exercise of the veto power, and thus fulfil the great object for which the three departments of our government were created. Then, too, this power in the hands of the President is an additional guaranty against hasty and ill-considered legislation.

But the veto power exercised by the President is quite different from that exercised by the rulers of most other nations, and in this it is in harmony with the institutions of our country. The veto of the Roman Tribune was final, as is also that of the English king, as well as that of almost all European sovereigns, but the veto of the President is not, except in the case of all bills vetoed or "pocketed" (if the President fails to sign or veto a bill sent him during the last ten days of a session, it is called "pocketing")



during the final days of each session, when his veto power is practically absolute. In all other instances the Congress can pass a vetoed bill over the President's objection by a two-thirds vote of the members present and voting in each House.

The provision that a bill shall become a law if it is neither vetoed or signed by the President within ten days after it is delivered to him, in case Congress is in session on the tenth day, is a very wise one, as it allows him ample opportunity to give the matter careful consideration, but at the same time prevents a bill being killed by negligence or held up for the purpose of embarrassing legislation. It is customary for the Presidents, when they feel that they cannot give a bill their full sanction, and yet do not wish to give it their entire disapproval, to allow it to become a law in this manner.

### CLAUSE 3.

#### JOINT RESOLUTIONS.

Every order, resolution or veto to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

This clause was inserted in order to prevent the Congress from eluding the President's veto power by passing an order or resolution which is in effect a law, by merely giving it a different name. It is of very little value in view of the fact that the courts would probably declare all orders or resolutions passed with such an intent entirely void. The only office it therefore serves is to put the matter beyond controversy.

But not all resolutions or orders need be submitted to the President for his approval or disapproval. Thus, all resolutions passed by the two Houses, but not intended to have the force of law, such as agreements to do something at a future time, which are called *concurrent resolutions*, need not have the President's signature. Neither need resolutions proposing an amendment to the Constitution ; nor those expressing an opinion merely ; nor those relating solely to the organization or regulation of either of the Houses.

## SECTION 8.

### POWERS OF CONGRESS.

Thus far Article I. of the Constitution has treated entirely of the *structure* and *organization* of the legislative department. Now we have come to that part which treats of the *powers* of Congress, the sole legislative body of the national government.

But before entering upon the study of these powers it is well for the student to at this time know and constantly bear in mind that there is a very great distinction between the power of Congress to enact laws and the power of the several state legislatures to do the same thing, for it will be constantly cropping up in the study of the legislative functions of both. This distinction is, that the Congress of the United States can pass only such laws as it is expressly authorized to pass by the Constitution of the United States, and such other laws as are impliedly permitted by these ; while on the other hand the state legislatures, *ex proprio vigore* (of their own inherent right), have the power to pass all laws which they are not either expressly or impliedly forbidden to pass by their own Constitutions or by the Constitution, laws and treaties of the United States. The importance of this distinction becomes doubly apparent when it is recognized

that the supreme courts of both the states and the nation must always take it into consideration when determining the validity of a law, the former declaring all laws not prohibited by the Constitutions of their respective states, or by the Constitution, laws and treaties of the United States, valid, while the latter declares all laws passed by Congress that are not expressly or impliedly authorized by the Constitution of the United States invalid. This great and important distinction is maintained for the reason that, as the people in this country are the sovereigns and the sources of all law, they, when they formed themselves into separate and distinct governing bodies called states, had the right to pass any kind of a law they were so minded. But it did not take them long to discover that they must place some restrictions upon themselves or they would at times be likely to abuse their power. So they formed a state Constitution setting forth what laws they should be prohibited from passing, for the purpose of accomplishing this end. But unlike the states, the national government has no power *ex proprio vigore*, and this for the reason that as it was formed by the states for the purposes hereinbefore mentioned, they delegating to it only such of their inherent power as they were willing for their common good to surrender, and no more, thus making the national government a government of limited power. This can be plainly seen when we consider that the states disunited might each still continue to exist, but without the states in union there could be no such political body as the United States. Hence, it follows that if the United States has no inherent power, but must depend for what power it does have upon the several states, which power they can at any time increase or diminish at their pleasure, that its Congress can enact only such laws as the power which was delegated to it permits.

## CLAUSE 1.

## TAXATION.

The Congress shall have power:

To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

As we have already seen, the Continental Congress, receiving what little power it had from the Articles of Confederation, was unable to levy taxes, etc., to support the government, which in consequence was almost a total failure. Therefore, when the new government was formed under the Constitution, it was determined to remedy this vital defect in the old by giving it the power "to lay and collect taxes, duties, imposts and excises," for the truth of the fact as taught by stern experience, that no government can long exist unless the power of taxation, which is a necessary part of its sovereignty, is given it, was deeply and indelibly impressed upon the minds of the framers of the Constitution. But even had the Constitution remained silent on this point, yet would the government created by it at least impliedly have had the power to levy and collect taxes, etc., for the reason that the United States is a nation having sufficient power to perpetuate its existence, and not a loose confederation of nations, as was the case under the Articles of Confederation.

The reason that the power to levy and collect taxes, etc., was reposed in Congress is self-evident. "They who must pay the taxes should have the right to superintend their levying, collecting and expending," and this they do through their representatives in Congress. But the fact that the United States has this power does not preclude the several states from exercising it also. They can levy all taxes necessary for their own maintenance, as well as authorize



all municipal bodies existing within them to do the same. But they cannot levy duties on imports or exports for their own benefit, except so far as may be necessary to execute their inspection laws.

The usual means of raising money to carry on the government of the United States is by *indirect* taxation, i. e., by means of duties, imposts and excises; though the government has the power to levy a *direct* tax on the persons and property of its people (Section 2, Clause 3, this Article). The latter, however, has been done but six times during the history of the nation, the last being in 1862. At the present time it would be practically impossible for the national government to levy direct taxes, because of the enormous expense attendant thereon, it not being in a position to compel the states to collect the same for it.

*Duties* are taxes levied on the importation or exportation of goods or other property. *Export* duties cannot be levied in this country, as they are forbidden by the Constitution (Section 9, Clause 5, this Article), though it would seem from a recent decision of the Supreme Court that they may be levied by Congress in the so-called colonial territories of the United States, such as Porto Rico and the Philippines. *Import* duties are of two kinds, *specific* and *ad valorem*. A *specific* duty is one upon the weight or measure of goods; an *ad valorem* duty is one upon their value. The most usual duties imposed by the government on imports are *ad valorem* duties, as they seem to be the fairest and most satisfactory. The *rate* of duty is called a tariff, of which there are three kinds: a *prohibitory tariff*, a *protective tariff* and a *tariff for revenue only*. When no duties are levied upon imports or exports the status is known as *free trade*.

*Imposts* and *excises* constitute what is termed "internal revenues," for the reason that they are levied on certain domestic industries of the country. The word *imposts* has

no special significance and is used vaguely in the Constitution, though it is supposed to cover all kinds of indirect taxes not included or covered by the words *duties* and *excises*. *Excises* are indirect taxes levied on tobaccos, fermented and alcoholic liquors, etc., manufactured in this country, and on persons who manufacture or use certain articles, instruments or things.

The reason for the provision that indirect taxes shall be uniform throughout the United States is very obvious, as it is the only fair means of taxation, and prevents legislation partial to certain portions of the country as against the remaining portions. But this wise provision, it would appear from a decision of the Supreme Court of the United States rendered during the latter part of May, 1901, applies only to such parts of the nation as enjoy the privileges and guaranties of statehood, leaving all territories and dependencies of the United States at the mercy of Congress in this respect. It is to be hoped, however, that the proverbial fairness and love of justice of the American people will not tolerate the enacting by Congress of revenue laws which discriminate against these territories and dependencies. To permit such to be done would be to act the part of tyrants and bull-dozers by our people against those who are helpless and at our mercy, and to set at defiance all our national traditions.

Under this clause Congress has power to levy and collect taxes, direct and indirect, but for the accomplishment of *three objects only*, in so far as the states themselves are concerned, and these are: First, to pay the public indebtedness; second, to provide for the common defense; and, third, to provide for the general welfare. Congress has no right to tax the people of the states for any purpose other than the accomplishment of these three objects, and then only enough to attain that end. Taxes levied and col-

lected by Congress cannot be used for the benefit of one, or part, of the states, to the exclusion of the rest; nor can they be used for any other purposes than the payment of the national debt and the providing for the common defense and general welfare of all the people.

## CLAUSE 2.

### POWER TO BORROW.

To borrow money on the credit of the United States.

This clause gives Congress power to borrow money on the credit of the United States, so that the hands of the nation need not be bound and helpless in times of great emergency. But Congress is the only department of the government that can borrow, unless it by law delegates its power in this respect to some other department. Ordinarily, in time of peace, it should not be necessary for Congress to exercise this power, and it very seldom does. But in time of long and continued war no taxes which the people could pay would be sufficient to defray the expenses of carrying on the same, and hence the wisdom of this provision.

The present out-standing debt of the United States is in three forms: Bonds, treasury notes and floating debt. The former is the most usual form, and bear interest at from three to five per cent, payable semi-annually. Treasury notes, or "greenbacks," as they are called, are in effect very similar to bonds, both of them being promises to pay money, but greenbacks do not draw interest as is the case with bonds, and are payable on demand at any time, while bonds are payable only after they become due. The floating debt consists of interest accruing, salaries unpaid, etc. Bonds are always sold to the highest bidder for cash, and on account of the good credit of the United States usually command a premium.

## CLAUSE 3.

## POWER TO REGULATE COMMERCE.

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

We have hereinbefore noted that under the Confederation and previous thereto each of the states had exclusive control over its own commerce, and regulated the same in its own peculiar way. Of course, as was natural under these conditions, each state exerted every effort to benefit itself at the expense of the others, and the result was that the commerce of all of them became practically ruined, and it is not at all improbable would have been the means of breaking up the Union eventually had this power not been taken away from them. For these reasons the wisdom of this provision, that Congress shall have the exclusive regulation over all commerce, both foreign and domestic, becomes doubly apparent.

The power of Congress to regulate commerce implies also the power to prescribe rules for traffic and navigation between the several states and with foreign nations. Thus, if a navigable river is partly in one state and partly in another Congress has the exclusive power to prescribe rules for the regulation of the commerce carried on thereon, as is also the case on inland seas similarly situated, and on railways not wholly within one state. So, also, has it the exclusive power to prescribe rules for the regulation of all commerce with foreign nations. But it has no control over the commerce carried on on railways, waterways, etc., situated exclusively within the boundaries of any state, as such state has entire control over same. Commerce between the states is now to a great extent regulated by Congress through the Inter-state Commerce Commission, which was created by it for that purpose.



In the regulation of the commerce between the states Congress has wisely made the same entirely free, so that goods can be sent from any point in the Union to any other point without being stopped to collect duties thereon on the borders of each state through which they may have to pass to reach their destination. And indeed, even if Congress did attempt to do so the people would not tolerate the measure, but would rise up in righteous wrath and compel the repeal of same, even as they compelled the repeal of the embargo act, in 1809, by means of which Congress over-reached the power given it to regulate commerce with foreign nations by attempting to prohibit it entirely. But on all import commerce with foreign nations there is usually a duty imposed, which is at times so high on some articles as to be prohibitive and low on others, or absent altogether, according to the whims and ideas of the party which happens to be in power.

Congress has also the sole power to regulate all commerce with the Indian tribes, and this whether such tribes are located entirely within the boundaries of a certain state or not. This was so provided for the reason that, as Indians still retaining their tribal relations are considered the wards of the nation, it should have exclusive control over them so far as the regulation of their commerce is concerned. Then, too, it was thought that this course would prove an additional safe-guard to secure peace and good-will between the Indians and the frontier settlers.

#### CLAUSE 4.

##### NATURALIZATION AND BANKRUPTCY.

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcy, throughout the United States.

Naturalization is the process by means of which one not born in this country becomes a citizen, not of any one of

the states, but of the United States. Hence, as it is the United States alone that are concerned, with the exception of the party applying for citizenship, it is but right and just that its Congress should have exclusive control over same.

A *citizen* of the United States is a member of its body politic, all of them taken together constituting the nation. All other persons are *aliens*, and if they wish to become citizens they must be naturalized. All persons born within the jurisdiction of the United States are of course its citizens by virtue of their birth-right, with probably the exception of Indians not taxed. But the student must not make the mistake so common among nearly all classes of people that the terms *voter* and *citizen* are synonymous, for they are not. As a matter of fact, perhaps not more than one-fifth of the citizens are voters, while by no means all voters are citizens of the United States. Thus, women and children, if possessing the necessary qualifications, are citizens, but as a general rule they are not voters. While, on the other hand, in most of the states, an alien may become a voter by residing therein for the period of one year, he having first declared his intention to become a citizen of the United States.

Aliens may become citizens of the United States by complying with the naturalization laws of Congress, or by virtue of a special act passed by Congress for that purpose, but in no other way. To become a citizen under the naturalization laws two steps are necessary. The first is that the alien must declare his intention to become a citizen of the United States before the clerk of some state or national court of record, who thereupon gives him a certificate, commonly called his "first papers," which entitles him to take up a homestead of 160 acres if he so desires and also the protection of the United States while traveling in for-

foreign lands. This certificate may be taken out the moment an alien arrives in this country, if he is so minded. But this does not make him a full-fledged citizen. Before he can become such he must have resided in the United States for at least five consecutive years, at least two of which must have elapsed since he received his "first papers." If he has complied with this requirement he will be entitled to take out his "second papers," after which he becomes a full-fledged citizen and entitled to all the privileges and immunities of the same, so far as the national government is concerned, with the exception that he cannot act as President or Vice-President of the United States. These "second papers" can only be taken out during the term time of some United States or state court of record, and in open court, at which time and place the prospective citizen must prove that he has resided in this country at least five years, two of which have elapsed since he took out his "first papers"; that he has been of good moral character during that time, and that he is "attached to the Constitution of the United States, and well disposed to the good order and happiness of the same." After this has been done to the satisfaction of the court, he must renounce all allegiance to any foreign power, prince or potentate, and especially the one of which he was last a subject or citizen, and swear fealty to the United States, which completes his naturalization and entitles him to his final certificate. Aliens who are made citizens other than by this method become such usually by virtue of a treaty or a special act of Congress. Thus, when the Louisiana territory was added to this country all the people residing therein, except probably slaves and Indians not taxed, became by virtue of the treaty of purchase citizens of the United States. But it seems that the inhabitants of our latest acquisitions, Porto Rico and the Philippines, did not become citizens of the United

States by virtue of the treaty of Paris. Just what their status is has as yet not been determined, though it appears that they hold the dual and seemingly contradictory status of citizen-subjects—that they are citizens to the extent that they can be taxed by Congress, but not to the extent that they can vote. Hence, if this is the case, the only way they can become citizens is by special act of Congress.

Under this clause Congress also has the power to pass a uniform bankruptcy law. It seldom avails itself of this power, however, but leaves the matter to the several states. At the present time, nevertheless, there is a national bankruptcy law on the statute books, and consequently the insolvency or bankruptcy laws of the several states have to give way to it and remain inoperative until such time as the Congress may see fit to repeal it. The purpose of these laws, whether state or national, is to enable the creditors of an insolvent debtor to have him declared a bankrupt and thus cause all his property liable for debt, so far as it goes, to be divided equitably between them; and also to enable a debtor who feels that he is so overwhelmed with debt that he can never extricate himself to enter a petition of voluntary bankruptcy, and thus be freed from his old debts and be put in a position to commence business again on a new basis. There is an important difference, however, between the state and national bankruptcy laws which should at this time be noted. This difference is, that the national bankruptcy laws free an insolvent from all his debts contracted previous to the time he is declared a bankrupt by the United States courts, no matter whether they were contracted *before* or *after* the law went into effect, while those of the states can only free a bankrupt from the debts contracted *after* the date the law went into effect.



## CLAUSE 5.

## COINAGE, WEIGHTS AND MEASURES.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

The right or power to coin money and regulate the value thereof is a prerogative of sovereignty, and hence naturally belongs to the United States. If such were not the case the monetary system of a nation would be in hopeless confusion and the commerce thereof practically paralyzed. For these reasons none of the states can coin money, or regulate the value of money; nor can counties, cities or other municipal corporations; nor can individuals. And the only department of the United States government that can coin money and regulate the value thereof is Congress. All money coined without the authorization of Congress is counterfeit and illegal. The money of the United States, as is that of all civilized countries, is made of gold, silver, copper and nickel, and is "coined" by simply stamping on a piece of precious metal the value which it is intended to represent. It is commonly thought that greenbacks and all other paper which circulates as money is money, but such is not the case. They are simply promises to pay money, as are bank notes, checks, bank drafts, bills of exchange, etc. Everything that circulates as money in a country is called its *currency*.

Congress has thus far not attempted to regulate the value of foreign coins, except the rate at which they shall be taken in satisfaction of taxes and duties. But in order to facilitate the transaction of business between this nation and foreign countries the great commercial centers maintain a rate of exchange as near as may be to that of the money markets of the world. Foreign coins are not legal

tender in this country for any amount, and hence need not be accepted in satisfaction of a debt unless the creditor chooses to do so.

Congress has never availed itself of the power to fix the standard of weights and measures, but has left the matter entirely to the several states. The laws of all the states on this subject, however, with but slight exceptions, are the same, so that practically no inconvenience is felt in this respect for the want of a uniform national system. The only thing in this connection that Congress has done was to enact a law declaring the metric system of weights and measures legal, but it did not declare that said system must be used to the exclusion of all others. It is perhaps at some future time, when the people have become familiar with it, the intention of Congress to make the metric system the only legal system of weights and measures, as the tendency of all civilized nations is to adopt it as such, and in that event secure a uniform system of weights and measures throughout the world.

#### CLAUSE 6.

##### COUNTERFEITING.

To provide for the punishment of counterfeiting the securities and current coin of the United States.

Under this clause, which is naturally appendant and appurtenant to the last preceding one, Congress has the power to punish the counterfeiting of the coins, notes, postage and revenue stamps, bonds, etc., of the United States, and has long since exercised it by making counterfeiting a crime which is punishable by fine or imprisonment, or both, in various degrees, according to the enormity of the offense.

## CLAUSE 7.

## POST OFFICES AND POST ROADS.

To establish post offices and post roads.

It is hardly necessary to comment upon the value of the postal system which has been inaugurated by virtue of the laws passed by Congress under this clause. for the many advantages emanating therefrom have been so beneficent and useful to the whole people, rich and poor, that they are plainly apparent. The postal system enables us to have friendly and business intercourse with distant people; it enables us to be in constant touch with the whole world through the medium of the press; it enables us to carry on our business transactions with greater ease and safety than would otherwise be the case; and all this in certainly a more efficient and cheaper manner than if the post offices and post roads were under the management of the several states or of private individuals. For two cents we can send a sealed letter to any point in the United States, or in Mexico or the Dominion of Canada. For but little more, because of treaties made to that effect, we can send similar letters to almost any point in the entire civilized world. Packages of nearly all kinds, if not too heavy, may be sent from one place to another for a mere song. When we are desirous of sending money or other valuables to a distant point, the post office, by means of its postal order and registered letter system, enables us to do so, and this with perfect safety and at a very moderate expense.

The fact will be at once recognized that such a stupendous business enterprise as the postal system of the United States has grown to be necessarily requires a great and complex organization to conduct the same. This is done through what is called the Postoffice Department, the head

of which, the Postmaster General, is a member of the President's cabinet, and is appointed by him with the advice and consent of the Senate. Under the Postmaster General and appointed by him, directly or indirectly, are many thousands of clerks, assistants, postmasters, mail clerks, mail carriers, inspectors, etc. The postmasters alone thus appointed total about 65,000. About 2,000 of the most important post offices, however, are filled by direct appointment by the President.

Because of the authority vested in it by this clause Congress also has power to establish post roads. Generally, for the purpose of transmitting the mails, it has made use of roads already established by the states or by corporations existing under their laws. These, whether they are on land or water, are first selected for their fitness and declared to be postal roads before they can be used as such. But Congress has established some post roads. Among those in the nature of highways it has thus established is the Cumberland road from the Potomac to the Ohio, and among those in the nature of railways are the Union Pacific and Central Pacific, together making one line, and the Southern Pacific and the Northern Pacific. These railways, in addition to being established postal roads, are also United States military roads. But none of them were built by the United States directly, but by incorporated companies under its authority, they having been assisted by it with money and bonds.

#### CLAUSE 8.

##### COPYRIGHTS AND PATENTS.

To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries.

Nowhere in the Constitution does the wisdom and foresight of its framers shine out with a more brilliant light



than from this clause. While in the very midst of the turmoil and strife over the conditions under which the new government they were contemplating should have political life, they suddenly stopped momentarily from their labors, as if struck by a magical thought, and inserted this clause, realizing that no nation, however beautiful and frictionless might be its political machinery, can be truly great unless it takes the sciences and the arts under its fostering care. And when we consider, too, how poorly these ends would have been secured had the matter been left entirely to the states, in which it was inherent until taken away by this clause, by reason of each of them having different laws on the subject, the wisdom of the insertion of same becomes exceedingly plain.

By virtue of the laws of Congress made under the authorization of this clause authors can secure copyrights on their works for a period of twenty-eight years, and for an additional period of fourteen years if the application for renewal is made more than six months prior to the date on which the original copyright expires. By obtaining a copyright, which is done through the librarian of Congress, an author has the exclusive right during the term of its existence to publish his work in whatever manner he wishes, and to sell the same anywhere in the United States. A copyright is personal property, and hence may be sold and inherited in the same manner as other personal property, with the qualification that a sale of a copyright to be binding must be registered in the office of the librarian of Congress. Inventors, too, under the patent laws of Congress, are enabled to secure to themselves the exclusive right to manufacture and sell any new and useful invention that may have been the product of their genius. But no patent can be had for an invention unless it is really a new one, or an improvement on an old one. Patents are

granted through the patent office, a sub-department of the Department of the Interior, for the term of seventeen years, and can be extended on application for seven years more. Patents, like copyrights, are personal property and may be sold and inherited. An inventor who wishes to secure his invention, but needs time to perfect it before applying for a patent, can upon application obtain a caveat, which serves this purpose for the period of one year. All patented articles must have the word "patented," with the date of the patent, affixed to them in some manner. And, in order to preserve the validity of a copyright, every copy published must give notice that it was "entered according to the act of Congress, in the year . . . ., by . . . . ., in the office of the librarian of Congress, at Washington," or, at the option of the holder of the copyright, the words: "Copyright, 19.., by . . . . ."

## CLAUSE 9.

### FEDERAL COURTS.

To constitute tribunals inferior to the Supreme Court. •

A Supreme Court of the United States is provided for by Article III., Section 1, of this Constitution, and hence can neither be created nor abolished by Congress, as is the case with all other United States courts. However, subject to the limitations of the Constitution, Congress may at its pleasure fix the number of justices thereof, as well as their salaries, and define their duties.

Under this clause Congress has thus far organized and defined the powers and jurisdiction of the following inferior courts: United States circuit courts of appeals, one in each of the nine judicial circuits of the nation; United States circuit courts, which hold at least one session in each state

annually; United States district courts, with one to three or four districts in each state; one United States court of claims; a supreme court of the District of Columbia; and territorial courts in each organized territory. The two latter classes of inferior courts, however, are not, strictly speaking, United States courts, but only local courts having limited jurisdiction; but as they were established under the authority reposed in Congress by this clause, it was thought best to mention them. The court of claims was established for the purpose of hearing and determining all claims against the government, and it is the only court in which the United States permits itself to be sued. All the other United States courts, the Supreme Court included, are courts of record; that is, they are judicial tribunals having attributes and exercising functions independent of the judges designated to preside over them, and proceeding according to the course of the common law. In them are tried all cases arising under the laws of the United States, and also certain controversies of a civil nature in which a state or the citizens of different states are concerned. The United States district and circuit courts are what is known as courts of original jurisdiction. The other two are, generally speaking, courts of appeals. The judges of the United States courts are appointed by the President, with the consent of the Senate, and hold office for life, or "during good behavior."

#### CLAUSE 10.

##### PIRACIES, PUNISHMENT OF.

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.

"Piracy is robbery or forcible depredation upon the high seas, without lawful authority, done *animo furandi*, and in the spirit and intention of universal hostility." By the

passive but common consent of all civilized nations one who practices piracy is an outlaw and a common enemy to humankind. Pirates are not entitled to the protection of the nations of which they are citizens, but may be captured by the forces of any nation and punished without trial. The universal punishment for piracy is death. But piracy, in order to be punished by the United States or any other nation, must have been committed on the "high seas"; that is, on the waters of the ocean beyond low water mark. Within that limit the nearest state has jurisdiction, and all piratical depredations committed therein are punishable only under the laws of such state.

Felonies are such crimes as are punishable by death or by imprisonment in a state or national prison. When committed on the high seas they are punishable by the courts of the nation on the shores of which the ship having the felon on board first lands. When committed within low water mark they are punishable by the courts of the nearest state. The term *felony* includes such crimes as murder, manslaughter, burglary, larceny, arson, mayhem, etc.

The law of nations, commonly called "international law," consists of those rules which regulate the conduct and mutual intercourse of independent Christian states with each other through reason and the sense of natural justice. These rules must be observed by all civilized nations, the United States included, and by the citizens or subjects thereof. And it is no excuse to any such nation that it did not have laws to compel its citizens or subjects to fulfill their duties to other nations. It is its business to have such laws, and if it fails therein it must bear the burden of settling any injury that may have been done thereby. Therefore, in order that the United States may be in a position to as much as possible refrain from trespassing on the law of nations and also keep its citizens from doing so,



it is very apparent that Congress and not the states should have all needed power to enact laws compelling the due observance of same.

## CLAUSE II.

### POWER TO DECLARE WAR.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

The power to declare war is one of the highest attributes of sovereignty. Even under the Articles of Confederation the people, in spite of the fear and jealousy with which they regarded the general government at that time, saw the necessity of vesting this power in the Continental Congress. The only question then is, should this power be exercised by the Legislative or by the Executive Department of the United States. The right to declare war belongs to the sovereign. In monarchies the executive is the sovereign and consequently has the power to declare war; but who is the sovereign in the United States? Surely not the President: and then, too, it would be dangerous and incompatible with the institutions of a republic to entrust such powers in his hands. No; the people of the United States constitute the sovereign, and hence it is the people that through their Congress have the power to declare war. A formal declaration of war, however, is not necessary to commence the same, though among civilized nations it is usually the custom to make one. Open acts of hostility are enough. But in making peace Congress directly has but a partial voice, as it is entered into by the President with the advice and consent of the Senate; but indirectly it can, if it so chooses, stop a war in which the United States may be engaged by refusing longer to appropriate money to carry on the same.

A letter of marque and reprisal is a commission issued to a private vessel, commonly called a *privateer*, to go beyond the boundaries of the nation commissioning it and seize the vessels of its enemy. Privateers, in order to prove that they are not pirates, must always be able to show their letters of marque and reprisal. The chief difference which distinguishes privateers from vessels of the regular navy is that they are fighting solely for the sake of plunder, the owners or managers of a privateer being entitled to all of the enemy's property they can capture, and are controlled only by the terms of their commissions, while vessels of the regular navy are always under the direct control of their own government, and in command of a responsible officer, and the plunder which they take is divided among the officers and men. This plunder, whether taken by regular war vessels or by privateers, is called *prizes*, and in either case must be brought into an American port, and all questions as to the legality of their capture determined by some district court of the United States. If they are declared legal, they are sold under the authority of the court and the proceeds of such sale distributed among the officers and men, according to law, in case the capture was made by a regular war vessel; or if it be a privateer that took the prize, to her owners or managers. If the capture is not legal, however, then it must be returned to the party having the best title thereto.

Captures of the public and private property of an enemy may also be made on land. But in this event, however, the property goes to the government of the United States, and not to the soldiers capturing it. All questions as to the legality of these captures are also decided by the district courts of the United States, as in the case of prizes.

## CLAUSE 12.

## POWER TO MAINTAIN ARMIES.

To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.

The power reposed in Congress to raise and support armies is a sovereign power necessarily appurtenant to that of declaring war. To carry on war a nation must have armies, and it must have a means of raising and supporting the same. If it has not this power, it would be practically impossible for it to conduct an effective war, and hence would justly earn for itself that which it would receive,—the contempt, disrespect and insults of other nations and the disgust and dissatisfaction of its own people.

But there is a limit to all things, and there is a limit in the matter of armies beyond which we as a nation had not ought to go. Our isolated position from the warlike nations of Europe; the very nature of our institutions, which were designed, not for purposes of conquest, but for the purpose of harboring and perpetuating the spirit of liberty; the utter incompatibility of a standing army with the foundation principles upon which our government was builded,—all convinced the fathers fully that a large standing army should not be ours. They believed that an army sufficiently large to insure domestic quiet and peace and to protect the frontier settlers from the depredations of the Indian hordes, was all that the nation needed during periods of general quiet, and that if any great emergency arose she could safely entrust her destinies to the patriot hearts of her sons. They had also learned from that inexorable and iron-hearted teacher, experience, that a large and devoted army in the hands of an ambitious and unscrupulous general or master is the most dangerous enemy

a free government can have. So to guard against all these things they qualified the power of Congress to raise and support armies, by providing that no appropriation of money to that use shall be for a longer term than two years. Under this wise provision it is impossible for any party to fasten upon the country a large regular army and support the same for a period of time long enough to allow it to become dangerous, for if it shows symptoms of desiring to usurp the rights of the people it can be effectually abolished on short notice by their refusing to support it longer. Owing, perhaps, in part, to the wisdom of this provision, the United States have never had the humiliating experience of having the existence of the government threatened by their army, as have had several other republics, nor are they likely to ever have so long as this provision remains unchanged and unrepealed.

## CLAUSE 13.

## THE NAVY.

To provide and maintain a navy.

It will be seen that in authorizing Congress to provide for and maintain a navy the Constitution does not, as is the case with the army, limit the period for which appropriations for its maintenance can be made. This is for two general reasons: First, it takes time to build up a navy, whereas an army can be quickly collected and equipped, and therefore it is necessary to always have a considerable one on hand to protect our commerce in times of peace and to protect our coasts and troop ships in times of war, as well as to annoy and disable the enemy as much as possible. And second, never yet has there been a nation that was deprived of its liberty through the instrumentality of its navy, and it is not at all probable that there ever will be one.



## CLAUSE 14.

## ARMY AND NAVY REGULATIONS.

To make rules for the government and regulation of the land and naval forces.

The power conferred on Congress by the last three preceding clauses to make war and to raise, organize and maintain armies and navies, also implies the power to govern such armies and navies. If this was not the case, then all the armies and navies it could organize and equip would be practically useless. Hence, Congress is by virtue of this clause expressly given the power to make rules for the government of our army and navy. All rules that are made for the government of the army are called *army regulations*, and constitute that branch of the law known as *military law*; while those governing the navy are called *navy regulations*, and constitute that branch of the law known as *navy law*. But the student must not confound these two branches of the law with that branch called *martial law*, for they are not at all the same, as is supposed to be the case by many. Military and navy law is the government of armies and navies; martial law is the government by armies and navies. These army and navy regulations prescribe the duties of all military and naval officers, as well as of common soldiers and seamen, and provide penalties for a failure to comply with the same. If the offense is trifling, the officer in command may reprimand the culprit or put him under arrest, without trial, for a period not exceeding ten days. But if the offense is of a serious nature, the trial must be by court-martial, which is a regularly organized tribunal having jurisdiction over all offenses against the military and naval laws. Insubordination and disobedience to orders by a soldier or sailor are crimes

punishable by court-martial, as is also "conduct unbecoming a gentleman" in an officer, as well as his refusal to pay his just debts. Courts-martial have, like courts of the common law, the power to inflict the death penalty, though they seldom exercise it unless the offense committed is extremely grave. But the President can pardon or commute the sentence of any person convicted by court-martial. The object for the establishment of courts-martial is to deal out justice to soldiers and sailors, and in times of war to civilians in the affected districts, also, in a more summary and speedy manner than would be possible in a court of law.

## CLAUSE 15.

## THE MILITIA.

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions.

The militia of the United States are its citizen-soldiers. By act of Congress the militia has been declared to be "all citizens and those who have declared their intention to become such, between the ages of eighteen and forty-five," and are liable to be called out to perform military duty by the President at any time. The term "citizens," as used in said act, means all *male* citizens; female citizens are not required to perform military duty. These include the *unorganised militia*, as well as the organized companies, battalions, regiments, etc., of the several states, known as the *organized militia*. For reasons hereinbefore mentioned the framers of the Constitution were decidedly averse to a large standing army, and so placed their whole confidence in the ability of the citizen-soldiery of the nation to meet and overcome all her difficulties. And whether this confidence has been justly merited or not, let the voices of an hundred glorious victories proclaim.

This clause gives Congress the power to provide for the calling out of the militia for the accomplishment of but three purposes, and no others: The execution of the laws of the nation, the suppression of insurrections and the repulsion of invasions. For similar purposes each of the states may also call out its own militia. Under the laws of Congress, however, the President alone can call out the militia of the United States, and this he may do at his discretion as to the number, and from any or all of the states, as may be most convenient. This is done by issuing a call to the governor of the state from which a certain number of militiamen is required, whose duty it then is to raise the number called for by the President from his state. But if for any reason a state does not furnish the number of men required of it, then the government has the power to raise them by conscription, or, as it is commonly called, by drafting. The last time the government was compelled to draft men for military purposes was during the Civil War.

Thus far the national militia has been called out but three times: in the whisky rebellion of 1794, to enforce the laws of the United States; in the War of 1812-14, to repel invasion; and in the Civil War, to suppress insurrection. All our other wars, the late Spanish-American war and our recent unpleasantness in the Philippines included, have been carried on by the government by means of the small regular army maintained under the provisions of Clause 12, assisted by regiments or companies of volunteers who have tendered their services to the government for a longer or shorter time. These volunteers do not constitute a part of the regular army, nor can it be said that they are called out as militia, for they offer their services to the government voluntarily and of their own volition. But it can be said to the everlasting

glory and patriotism of the American volunteer that all our great wars, as well as our smaller ones, were fought and won chiefly by his aid.

## CLAUSE 16.

## ORGANIZATION OF THE MILITIA.

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress.

The power given Congress by this clause to prescribe rules and regulations for organizing, arming and drilling the militia and for the government of such part of the same as may be in the service of the United States, is as necessary to make the last preceding clause effective as it is that Congress should have the power to prescribe rules for the regulation and government of the regular army, and for the same reasons. But when not in the service of the United States, the militia of each state is subject to the laws of such state only, and is governed by its own officers, except that the rules for organizing, arming and drilling same may at any time be prescribed by Congress, though carried out by the state. A state's organized militia usually consists of one or more regiments, each having its own regimental and company officers. When these regiments or companies are mustered into the service of the United States, they are in turn formed into brigades, divisions and army corps, over which are officers appointed by the President, but the regimental and company officers still retain their positions. Both the militia and volunteers, when in the service of the United States, are subject to the army regulations like the United States regulars. The navy may



also be increased, but only by volunteers. Congress has no power to call on the militia or raise men by conscription for this purpose. Volunteers on entering the naval service of the United States are subject to the navy regulations like the regular sailors.

#### CLAUSE 17.

##### POWER TO LEGISLATE EXCLUSIVELY.

To exercise exclusive legislation in all cases whatsoever, over such district not exceeding ten miles square as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

We have hereinbefore seen that Congress, as a general rule, can exercise only such authority as is expressly or impliedly delegated to it by the Constitution (see page 49). But there are a few places over which its rule is supreme, and is in no way or but slightly limited by the Constitution. These places are: The District of Columbia, in which the seat of government is located; all forts, magazines, dockyards, arsenals and other needful buildings the jurisdiction over which has been ceded to the government by the several states; all territories belonging to the United States; the waters of the ocean between low water mark and three miles beyond, including all bays, gulfs and inlets; on board United States naval vessels anywhere; and on board United States merchantmen when at sea, but not when in a foreign port.

When the Constitution was framed the United States had no permanently fixed capital, though the need of a site for one was deeply felt; and in anticipation of the United States being presented with one in the not distant future, the framers of the Constitution, with their customary foresight,

provided for its government by this clause. And they did not have long to wait before their anticipations became a reality, for in 1790 the states of Maryland and Virginia together ceded to the national government a tract of land on the banks of the Potomac just ten miles square. This was named the District of Columbia, and, in 1800, after the proper buildings had been reared in which to carry on the business of the nation, the seat of government was removed there. The District of Columbia, however, now contains only about seventy square miles, as all that portion of it lying on the Virginia side of the Potomac was re-ceded to that state in 1846.

Congress, in the exercise of its supreme legislative authority over the District of Columbia, at the present time governs it through three commissioners who are appointed by the President, but who are under its direct control. It has also power to levy and collect taxes on all taxable property found within the district and which is not owned by the government itself. But unlike the states, the district has no representation in Congress, nor is it entitled to any. Neither can its people vote for presidential electors. In other words, the people of the district have no voice in their own government. This condition at first glance seems unjust, but then we must consider that the apparent rights of the few must give way to the welfare and happiness of the many. The only way this inequality can be removed would be for Congress to either create a separate state out of the district or cede it back to its donor, Maryland. But to do either of these would be to defeat the object for which the district was originally formed, and surely common sense, coupled with the love of self-preservation, would suggest that this should not be done. Even the most zealous advocate of state rights can do no less than admit that the national government had ought to be su-

preme in its capital. In this way only can it guard itself from insult and effectually protect the public buildings and records from total destruction, or at least from grievous injury. As the district is now constituted every able-bodied man residing therein, except the civil officers of the government, is subject to the President's immediate call to arms, and thus in the course of a few hours at the utmost a considerable army of defense could be raised should occasion require it. But if the nation had to rely solely upon the militia of the several states to protect its seat of government, much more time would be required in which to bring the necessary number of men to the scene of action, and hence the relief might come too late to be of avail. For these reasons the wisdom of the present system is plainly apparent.

The propriety of the provision that Congress shall have exclusive legislative authority over its forts, arsenals, etc., is also too obvious to need further comment. But before this desirable end can be attained, the consent of the state in which such magazines, forts, etc., may be located must be first had and received. Thus far the states have willingly ceded to the national government all places situated within their respective borders and desired for these purposes, reserving only to themselves the right to serve all state processes, both civil and criminal, within the ceded territory, in order that these places might not become harbors of refuge for fugitives from justice. But all crimes committed within the limits of the ceded territory, however, must be tried in the United States district courts, though according to the laws of the state in which it is situated.

These forts, arsenals, etc., in addition to being under the exclusive jurisdiction of Congress, are also made by the acts of cession the property of the United States. This is quite different from the condition of things in the District

of Columbia, where the United States has exclusive jurisdiction, but has no property rights, except so far as the public grounds and buildings are concerned. And it is also quite different from the interest the government has in its unsold public lands, over which it has no more jurisdiction than over the several states, but which it owns in the same manner as does a private individual, except that such lands are exempt from taxation.

## CLAUSE 18.

## INCIDENTAL, OR IMPLIED POWERS.

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Under this clause Congress is given the right to pass all laws which may be necessary and proper for carrying into execution the powers given it by this Constitution, and also all laws which may be necessary to carry into effect all powers vested by it in the other departments of the government, or which may be necessary to provide for the common defense or general welfare of the people. But it is a mistake to think that this clause grants to Congress any powers which it would not have otherwise had. Its only object, to use the words of a great jurist, is to merely afford an express "declaration to remove all uncertainty, that every power is to be so interpreted, as to include suitable means to carry it into execution." Had the Constitution failed entirely to expressly give Congress the power to pass such laws, yet its right to do so would have been implied, for surely common sense would suggest that a government should be able to make all laws necessary to carry into effect the very objects that gave it birth. And in addition to such being the common sense view of the



matter, it is also a sound rule of law which has been sustained by innumerable affirmative, but without a single dissenting decision; and this for the reason that as it is impossible for the framers of any government to foresee all emergencies that may arise and expressly provide for them in advance, such government, as a necessary ingredient to its very existence, must have the implied general right to do all that may be needed to carry the powers granted it into effect. But in no case can Congress make laws relative to matters concerning which it is forbidden by the Constitution to legislate; or which are expressly reserved to the states; or which have not been expressly or impliedly granted to it.

## SECTION 9.

### PROHIBITIONS ON CONGRESS.

From the last section we learned of some of the laws which Congress is expressly or impliedly authorized to pass; from this section we are to learn of some of the laws which Congress is expressly prohibited from passing. In either event, if it oversteps its bounds, its action will be void *ab initio* and cannot be enforced.

### CLAUSE 1.

#### THE SLAVE TRADE.

The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each head.

At the time of the adoption of the Constitution slavery was still a lawful institution in the United States, though the trade in slaves had previously been abolished in ten of

them, leaving only North Carolina, South Carolina and Georgia dealers in slaves. These states insisted that some sort of a guaranty be given them that their slave trade would not be disturbed for a time at least, the outcome of which was a compromise to the effect that their traffic in this respect should not be molested until 1808, or until a later date if Congress so chose. But Congress did not choose to allow the importation of slaves after the date limited in the Constitution, and hence on the first day of January, 1808, a law went into effect prohibiting the same. The tax authorized by this article was never imposed. It will be seen that the framers of the Constitution disliked to tarnish that instrument with the use of the word "slaves," and so used the word "persons" instead.

As slavery and the slave trade has been abolished by the XIII. Amendment, this clause is now obsolete and of interest only from the standpoint of history.

## CLAUSE 2.

### THE WRIT OF HABEAS CORPUS.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

The writ of *habeas corpus* is the remedy the law gives for the enforcement of the civil right of personal liberty. It is considered the great "bulwark of liberty" and the best and only sufficient defense of personal freedom. By means of it any person who believes that he is illegally imprisoned can be set free by applying to any judge or court commissioner of any court of record in the United States, if the person having him in charge cannot show a legal warrant or other authority for his detention. Wherever this writ is not in suspension it is almost impossible for any one to be unjustly imprisoned for a considerable length of time, and that either by an officer or by a private individual.

But however valuable this great prerogative writ is thought to be as a means of defending the personal liberty of the people, yet in times of rebellion or invasion it may be suspended if the safety of the public requires such a course. The power of suspending this writ reposed originally in the judgment of Congress, and was exercised by it for the first time in 1861. But in 1863 Congress gave the President power to also suspend it whenever in his judgment the public safety required such a course. In several instances generals have taken upon themselves the authority to suspend it, but whether their acts were legal or not is questionable. But in no case do the courts allow the privilege of this important writ to be suspended except in that part of the country actually invaded, or in such a state of war as to obstruct the action of the regular courts.

The reason that the privileges of this writ are allowed to be suspended in cases of invasion or rebellion is because at such times the public safety demands that the officers of the government be permitted to arrest and imprison any suspect without a warrant or other legal authority, and because at such times the civil law wholly or partially gives way to its more summary sister, martial law.

### CLAUSE 3.

#### BILLS OF ATTAINDER AND EX POST FACTO LAWS.

No bill of attainder or *ex post facto* law shall ever be passed.

A *bill of attainder* is a legislative enactment which inflicts punishment without trial. Several centuries ago it was used commonly by the English parliament, and served as a means by which the party that happened to be in power wreaked its vengeance upon its opponent by executing or imprisoning the leaders thereof and depriving them of their honors, property and titles, and corrupting their blood so that their

descendants could not inherit property from or through them. The wisdom of this prohibition can be seen at a glance, for had Congress still the power to pass bills of attainder, each great political upheaval would no doubt be followed by scenes as unholy as ever marked the wake of a Cromwell or a Sulla.

Other objections to bills of attainder are that by means of them the accused is convicted without trial and often without even the privilege to appear and defend himself, which mode of procedure is utterly antagonistic to the fundamental principles of our government; and that by means of them a legislative body takes upon itself the performance of acts in their nature purely judicial. It is well and right that a legislative body, under proper restrictions, should have the power to try political offenses such as might merit impeachment, but to permit it to usurp the office of an organized judicial body by depriving one without due process of law of the personal rights so dear to every American heart,—life, liberty and property,—could never for an instant be tolerated in the American Union, else the government created would mock its creators.

An *ex post facto* law is one which inflicts punishment for the commission of an act not punishable by the laws in force at the time it was committed; or which changes the rules of evidence in such a manner as to allow conviction on less or different testimony than was the case at the time of the commission of the act; or which inflicts greater punishment on an offender than was prescribed at the time the offense was committed. This, however, applies to the criminal laws only, and not to the civil laws. A civil law may be retroactive in effect and still not be in violation of this clause of the Constitution. Nor are laws which in any manner make the penalty of a certain offense *less* than it was at the time the act was committed, in violation of same. Had it not



been for this prohibition the right of personal liberty would to a great extent have been defeated and one of the great objects for which the Constitution was framed set at naught.

The state legislatures are also forbidden to either pass bills of attainder or *ex post facto* laws (Section 10, Clause 1, this Article).

#### CLAUSE 4.

##### DIRECT TAXES.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

A *capitation* or *poll* tax is a tax levied upon all individuals of a certain class equally, without regard to position or wealth.

This clause was originally inserted as a concession to the slave states to prevent the levying of a capitation tax on two-fifths of the slaves who would otherwise have been subject to it, as they and all Indians still retaining their tribal relations were excluded in the enumeration taken to determine the representative population under Clause 3, in Section 2, as it was originally framed. But since the abolition of slavery this clause is of very little practical importance, as the representative population of the nation now consists of the whole number of persons under the jurisdiction of the United States, excluding Indians not taxed.

No capitation or poll tax has ever been levied by the United States.

#### CLAUSE 5.

##### DUTIES ON EXPORTS.

No tax or duty shall be laid on articles exported from any state.

An export tax or duty is an indirect tax laid on certain goods or property transported out of one state or territory

[1:9:4-5]

and into another (states as between themselves are considered foreign countries), or out of the United States. By prohibiting the levying by Congress of an export duty, as in this clause provided, the framers of the Constitution aimed to accomplish at least one, and in all probability two, objects. The first of these was to avoid the business prostration and petty jealousy existing under the Confederation by preventing any discrimination in favor of a certain state or section as against the remaining states or sections. The second was to encourage home production by enabling the people of the United States to compete the more readily in all articles raised or produced by them with the people of foreign nations, as the effect of an export tax is to raise the price of commodities exported and thus discourage home production. But as to this latter object there is some dispute, it being maintained by many that the aim of this clause is to prevent discrimination against any state or section only, and hence that Congress can levy an export duty on goods exported from the United States. The question has not as yet been decided by the courts, as Congress has never attempted to levy an export duty of any kind on goods exported from any state, but the better opinion, and the one that would in all probability be sustained, is that this clause, in addition to prohibiting Congress from laying a duty on articles exported from one state or section into another state or section, also prohibits it from laying an export duty on articles exported from any of the United States to a foreign country. It would seem, however, that Congress has the right to levy duties on articles exported from any of the territories belonging to the nation, and this whether they are exported to any of the states or other territories of the United States or to foreign countries.

## CLAUSE 6.

## COMMERCIAL RESTRICTIONS.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state, be obliged to enter, clear or pay duties in another.

One of the principal causes of the Revolutionary War was the persistent efforts of Great Britain to in every conceivable manner restrict the commerce of the colonies in order that the merchants of the home-land might be favored at their expense. Therefore, when the fathers had gained their independence and turned their attention toward the establishment of our present government, they determined that it should not make the mistake in this respect that Great Britain did, but that the commerce of each state should be on an equal footing, and that Congress should be prohibited from giving the commerce of one state any preference over that of another. Hence, to attain that end they declared through Clause 1, Section 8, this Article, that "All duties, imposts and excises shall be uniform throughout the United States." But still they were not content with their work. They feared that said provision might prove too general and afford Congress a loophole through which it could still discriminate in favor of one state or section as against the remaining states or sections. So to make "assurance doubly sure" they inserted this clause, the effect of which is to prevent discrimination and to establish virtual free trade between the states, and an exceedingly wise and beneficent provision has it proven to be.

## CLAUSE 7.

## APPROPRIATIONS AND ACCOUNTS OF PUBLIC FUNDS.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

The great object for the accomplishment of which this clause was inserted is to prevent frauds on the government

treasury, by requiring that no money shall be drawn therefrom unless the same has been authorized by the accredited representatives of the people; and to increase the feeling of responsibility of those officers whose business it is to receive, handle and pay out the people's money, by requiring that from time to time they shall furnish Congress and the people with a regular statement and account of the nation's receipts and expenditures. Of course, this does not prevent all frauds, but it makes their accomplishment much more difficult by rendering them liable to detection. The provisions of this clause are in entire harmony with the one which empowers Congress to raise money to defray the expenses of government.

Another object for inserting the above, and one which no doubt had great weight with the fathers, was to prevent an abuse which has often been practiced by the executives of certain governments,—the using of the public funds by the President for the furtherance of his own private ends. Had it not been for this clause there would have been no bar save honor to prevent the President from conducting the people's money into channels for the reception of which it was little meant, one of which might be the subversion of the very liberties of the people themselves.

A statement and account of the receipts and expenditures of the government is now published at least once each year in the form of a report of the Secretary of the Treasury.

## CLAUSE 8.

### TITLES OF NOBILITY.

No title of nobility shall be granted by the United States; and no person holding an office of profit or trust under them, shall, without the consent of Congress, accept any present, emolument, office, or title of any kind whatever, from any king, prince or foreign state.

One of the great fundamental principles upon which the structural work of this government was builded is that all



men are created equal before the law. While it is impossible to make all men equal before the bar of public opinion or of that artificial and too often shallow thing called society, yet in theory at least before the eyes of the law there shall be special privileges to none, but equality to all. In order to prevent the violation of this principle it was necessary to prohibit Congress from ever creating a titled aristocracy.

But this clause goes further than merely prohibiting Congress to grant titles of nobility. It also prohibits all officers of the United States, whether they be civil, military or legislative, from accepting presents, offices or titles from foreign nations or the rulers thereof, without the consent of Congress. The reason for this is that experience has proven to the sorrow of not a few nations that such presents, offices or titles are not often meant as a reward of merit, but as a bribe to the recipient to betray his country and perhaps imperil its liberties. If a present or title is not meant as a bribe the consent of Congress to its being received can be readily obtained. This clause, however, does not prohibit our citizens or the officers of the several states from receiving presents, etc., from foreign nations or from the rulers thereof, although the state constitutions very generally provide that their officers shall not do so. Thus far several American citizens have received honors at the hands of foreign states, and these either for services rendered those countries or for services rendered the cause of science and the arts. Neither does it prohibit the President from accepting, in the name of the United States, presents from a foreign prince, as such presents are considered as not meant for him, but for the nation, and are consequently its property. If propriety and common courtesy demand that a present be made such sovereign in return, it is determined upon by Congress and money appropriated for its purchase.

## SECTION 10.

## PROHIBITIONS ON THE STATES.

## CLAUSE 1.

## ABSOLUTE PROHIBITIONS.

No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in the payment of debts; pass any bills of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

By virtue of this clause the several states have bound themselves absolutely and unconditionally to surrender to the national government certain rights which were inherent in them, to-wit:

*First*, the right to enter into treaties, alliances or confederations with other states or with foreign nations, and this for the reason that to allow them to do so would be to invite foreign intrigues, and through their agency soon make an end to the Union. The result of this wise provision is to prevent foreign nations from fomenting sectional strife between the states, which is the forerunner of civil war; and also to prevent the several states from taking up the quarrels of different foreign nations, which if allowed would be the herald of national annihilation.

*Second*, the power to issue letters of marque and reprisal is denied the states, for the reason that, since the national government is responsible for their acts, if the states could license privateers they would be in a position to keep the nation ever involved in the throes of a foreign war. Hence, the wisdom of this prohibition.

*Third*, nor can the states coin money, for the reason that to do so is an attribute of sovereignty, and hence should be

denied to them and given to the national government, as is the case under the Constitution. Then, too, if each of the states could coin its own money, there certainly would be several different sets, under which condition the want of a reliable and uniform system of coinage would be deeply felt by the business interests of the country.

*Fourth*, states cannot issue or "emit" bills of credit, i. e., paper money, the office of which is to circulate as money, and this for the same reason that they are denied the power to coin money. But this does not prevent the states from borrowing money and issuing bonds in evidence thereof, for the reason that bonds are not considered as paper money, they not being designed to circulate as such.

*Fifth*, neither can the states make anything but gold and silver coin legal tender in the payment of debts, and this for the reasons just stated, though the national government can and has done so. But the states can if they wish make gold and silver legal tender to any amount, and that in the face of a United States law declaring that either the one or the other shall be legal tender for a much smaller or larger sum.

*Sixth*, the states are forbidden to pass bills of attainder and *ex post facto* laws for the same reason that the Congress of the United States is forbidden to do so.

*Seventh*, the states are absolutely forbidden to pass any law the purpose of which is to invalidate a contract previously made, or to in any manner change the terms thereof, and this for the reason that were the states in a position to pass such laws no man could with safety enter into any obligation with his fellows or with any state or municipality, thus breaking the spirit of industry and enterprise so prominent in our people. But the United States can and have passed laws impairing the obligation of contracts. Even at this writing there is one on the statute books in the form of a national bankruptcy law, the effect of which is to re-

lease one properly declared a bankrupt from all his existing debts, and this whether they were contracted *before* or *after* the date on which the law went into full force and effect. Under the state insolvency or bankruptcy laws, however, this is entirely different, for because of this provision an insolvent taking advantage of them can be released only from all debts contracted by him *after* the date on which the law went into effect. But a state can make all regulations it desires in regard to the form, conditions, etc., of future contracts, and can also pass laws either lengthening or shortening the time in which either a past or future contract shall become "outlawed," as such laws do not impair the obligation of contracts, but simply declare in effect that the state will not compel its courts to enforce contracts between persons after a certain time has elapsed from the date on which they were entered into. And,

*Eighth*, this clause unconditionally prohibits the states from granting titles of nobility, for the same reason that the United States are prohibited from doing so.

## CLAUSE 2.

### CONDITIONAL PROHIBITIONS.

No state shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision of Congress. No state shall, without the consent of Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as not to admit of delay.

This clause prohibits the states from doing certain things, unless Congress has consented either expressly or impliedly to the same, and those things are:



*First*, the states cannot lay imposts or duties on imports or exports without the consent of Congress, except such as may be necessary to properly defray the expenses of enforcing their inspection laws. This is in entire harmony with Section 8, Clause 1, and taken together with it shows plainly that the whole aim and intent of the fathers was to give the national government absolute control over both foreign and domestic commerce, in order to avoid the commercial evils that existed under the Articles of Confederation. But one slight exception to this intent is found in the entire Constitution, and the reason for it is that the United States, having a direct interest in the health and happiness of their people, could do no less than bow to the dictates of public policy and encourage the several states to inaugurate a system of inspection laws which would insure to consumers quality and quantity in the necessities of life, by making such system self-supporting. But even should Congress for any reason authorize the states to levy duties on imports and exports, yet they could not retain the money thus collected for their own gain, but must pay the same, except so much thereof as may be necessary to properly enforce their inspection laws, into the treasury of the United States. Thus far none of the states have been called upon to pay duty money to the national government, and it is not at all probable that they ever will be.

*Second*, the states are also conditionally denied the power to impose tonnage duties; that is, duties on ships in proportion to the amount of freight they are able to carry. This provision is in perfect accord with the determination of the fathers to give Congress absolute control over the commerce of the nation.

*Third*, the states are forbidden to keep armies and navies in times of peace, unless Congress consents thereto. It would have been simpler to deny to the states absolutely

the power to do this in times of national quiet, but the framers of the Constitution feared that an occasion might arise when it would be both necessary and proper for a state to have an army and navy even in time of peace, so they made it optional with Congress. But in times of war the states may raise and equip armies and navies both for their own defense and for the defense of other states, and this without the consent of Congress. This provision, however, does not affect the right of the states to organize, drill and arm their militia in times of peace as well as in times of war, and most of them have availed themselves of this power. It only prohibits them from keeping standing armies without the consent of Congress.

*Fourth*, nor can states enter into any agreements or compacts with each other or with foreign nations, unless such is the will of Congress. We have already learned that the states are absolutely forbidden to enter into *political* compacts with each other or with foreign nations (clause 1, this section); but from this clause we learn that they are only conditionally prohibited from entering into *business* or *commercial* compacts. This was so provided because it was feared that if the states were allowed to enter into business relations without the supervision of Congress, these might in time ripen into political relations, and thus become subversive of our liberties and our institutions. Congress, in the exercise of this power, has from time to time either expressly or impliedly permitted the states to enter into business compacts with each other, such as the settlement of disputes over their respective boundaries, and the like, but never with foreign nations. And,

*Fifth*, neither can a state engage in war with other states or with foreign nations, unless in self-defense, except it be authorized to do so by Congress. This is because if a state had the power to make offensive war whenever it was so

minded, the cloud of battle would perhaps be constantly hovering over the nation, for no state can go to war, either offensive or defensive, without involving the rest in it also. If a state is invaded, the United States is also invaded, and as the insult is to the nation, it must be avenged by the nation. So, too, if a state goes to war the United States must also, or effectually stop it at once, as the national government is held responsible for the acts of the states.

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## ARTICLE II.

### THE EXECUTIVE DEPARTMENT.

In the foregoing article we learned what constitutes and the powers of the Legislative Department of the government; in this article we are to learn what constitutes and the powers of the Executive Department. And as it is the duty of the Legislative Department to make the laws, so is it the duty of the Executive Department to carry them out and enforce them. Were there no Legislative Department, there would be no need of an Executive Department, as there would be no laws to enforce. Hence, it seems to us, that after the laws have been made by the Legislative Department as provided in Article I., it follows naturally that there should be some person provided for to carry those laws into effect. We say "person" for the reason that in order that the laws may be properly and effectually executed the decision and energy of a single will is an absolute necessity, and the only means to secure this is to repose the power and responsibility of enforcing them in the hands of a single man. Experience has shown that where a nation is governed by more than one person, the result is indecision, inaction, jealousy, lack of secrecy and very often intrigues

on the part of one or more of them to gain to themselves absolute power. A fitting lesson in this respect can be gleaned by studying the history of Rome under the triumvirate, and it is a lesson that was well learned and with much profit by the after ages, though the awful price paid by the teacher is beyond the comprehension of man. But the fathers did not need to turn their eyes backward to that dim age in order that the evil of reposing the executive power in more than one man might be taught them. The attempt made under the Articles of Confederation to place the executive functions in the hands of the Continental Congress when it was in session, and in the hands of a delegate from each state when it was not, resulting as it did in the utter failure to properly enforce the laws or to prescribe a decisive rule of action, was entirely sufficient to teach them that the best and surest means to attain the desired end would be to repose the power of enforcing the laws in the hands of one man, whom in their simplicity they termed the "President."

Having decided that it was necessary to have a separate and distinct Executive Department in the government they were about to launch on the sea of fate, the framers of this Constitution next set about to determine how it should be organized so that it would have the necessary energy and decision, and yet not be a menace to the liberties of the people, for in their ears kept constantly ringing the terrible warning of the ages that an unlimited executive is a despotism, and of all branches of a government the greatest foe to human liberty. They perceived that if the President as the head of the Executive Department could not be compelled to account for his actions, he would be tempted from time to time to usurp the functions of the other departments until finally he became the absolute ruler of an empire, instead of the president of a republic. This they accomplished,



*First*, by specifically defining his duties and threatening him with impeachment and removal from office if he attempts to go beyond the limit, or in any other manner grossly betrays the confidence of the people ;

*Second*, by limiting his term of office to four years, which is too short a time for an ambitious or foolish President to accomplish much mischief ;

*Third*, by requiring that he shall be chosen by the people through their accredited electors, thus making him indirectly responsible to them for his acts ; and

*Fourth*, if he is serving his first term, by holding out to him the hope of re-election should he be able to convince the people that he has served them well.

What success the fathers have attained in this respect, let the loving hearts of a grateful people proclaim.

## SECTION I.

### HOW ORGANIZED.

#### CLAUSE I.

##### VESTMENT OF EXECUTIVE POWER.

The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term shall be elected as follows.

From this clause we learn that the term for which a President shall hold office is four years, or two more than a Representative and two less than a Senator. He is elected on the first Tuesday after the first Monday of November in each year the number of which is divisible by four, and, except in case of a vacancy, takes his seat on the fourth day of March, at noon, in the next succeeding year, which is the

same time that the newly elected Congressmen take their seats. The Vice President is elected at the same time as is the President, takes his seat at the same time and holds office for the same length of time. The determination of the Constitutional Convention to make the terms of these officials four years in length was the result of a compromise, part of the delegates wishing to make them for one year only and part for life or during good behavior, while the remainder wished to make them seven years and prohibit re-election. But the Constitution is silent in regard to how many terms a President may hold. It has become a well-established custom, however, that a President can hold but two terms and no more. This custom was originated when the "Father of his Country" declined the proffered offer of a third term presidency, saying that to be President two terms was enough. The brilliant Jefferson confirmed it by declining to fill the President's chair a third time for the same reason, and it has been confirmed by the constant practice of the country ever since, until it can now be considered as a part of the *lex non scripta* (unwritten law) of the land.

We have hereinbefore noted the reason or reasons for which a Vice President is chosen, and hence will not take the space to again repeat them (see page 31). We will simply content ourselves by saying that in four instances only has a Vice President become President, and then for no other reason than the death of the President.

## CLAUSE 2.

### PRESIDENTIAL ELECTORS.

Each state shall appoint, in the manner which the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

In the Constitutional Convention three plans for the election of President and Vice President were proposed. The first of these was that they should be chosen by Congress; the second, by the people directly; and the third, by presidential electors. After much deliberation and debate it was decided that they should not be chosen by Congress for the reason that to allow such to be done would to a more or less degree make the Executive Department subordinate to and dependent on that of the Legislative, which is contrary to our plan of government; neither could they see their way clear to adopt the second plan for the reason that they feared the inexperience and partisan prejudices of the people would mislead them and render their choice an unwise one, and for the further reason that the smaller states feared that their voices would be but indistinctly heard should the President and Vice President be elected by direct vote. Hence, it was determined as a matter of compromise to adopt the third plan; that is, the election of President and Vice President by means of presidential electors chosen by the several states in such manner as the legislatures thereof may direct, each state to have as many electors as it has Senators and Representatives in Congress. This mode of election gave to the smaller states as great a concession as they could reasonably ask, and in addition it was thought that its natural result would be the selection of the wisest and best men in each state as electors, to whose wisdom, foresight and patriotism the fathers felt that they could safely leave the responsibility of choosing a President and Vice President of the United States. In theory this was an ideal plan, indeed, but in practice it did not work as well as the delegates fondly expected it would. In actual practice the President and Vice President are chosen by the people indirectly, the electors being pledged beforehand to cast their votes for the candidates of the

party electing them. This of course was a natural result of the division of the people into several political parties, the aim of each of which is to obtain control of the government, but was little dreamed of by the fathers. The presidential electors have never yet failed to vote for the candidates of the party that elected them, except those pledged to vote for Horace Greeley for President, and this was because he died shortly prior to the date on which they met to cast their votes.

It having been determined that these high officers should be elected by electors, the next question that naturally presented itself was: What shall be the qualifications of these electors? and in what manner shall they be chosen? In determining the qualifications of an elector it was thought sufficient to prescribe only that he must not be a Senator or Representative or a civil officer of the United States. This was done for the purpose of depriving him to as great an extent as possible of any personal interest in the result of the election. But as electors are now practically nothing more than mere machines whose business it is to cast their votes for the candidates of the party electing them, this provision is of no apparent value and has been evaded in numerous and various ways. But when it came to determining in what manner the electors should be chosen, however, there was much difference of opinion, and so it was decided to allow each state to choose its electors in the way best suited to its fancy. Very naturally this resulted at first in their being chosen by divers methods. Some states appointed them through their legislatures; some elected them by districts, which seems to us much the fairest way; and still others by a vote of the people of the entire state. This latter method is the one now generally used throughout the nation.



## CLAUSE 3.

## ELECTION OF PRESIDENT AND VICE PRESIDENT.—(TWELFTH AMENDMENT.)

The electors shall meet in their respective states and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate. The President of the Senate shall in the presence of the House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest number not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall fall upon them, before the fourth day of March, next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to the office of Vice President of the United States.

It will be noticed that the original clause 3 is omitted and the same as amended by the XII Amendment to this Constitution is inserted in its stead. This is because said amendment entirely supersedes the original clause, and therefore renders it of historic value only.

The student will readily perceive from this clause as amended that the President and Vice President may be

chosen by a resort to either one of two modes or processes—by receiving a majority of the votes cast by the whole number of electors appointed, or, in case there is a failure in this, the President may be chosen by receiving a majority of the state votes cast by the House of Representatives, and the Vice President may be chosen by receiving a majority vote of the whole number of Senators elected.

FIRST PROCESS.—The first mode or process of electing the President and Vice President is accomplished under the following restrictions:

*First*, the electors, after they have been chosen, meet in their respective states, at the seat of government thereof. The reason for this was to render it more difficult, if not entirely prevent, the bargaining for votes, which could be much easier accomplished if the electors all met at the same place. When, by reason of death or ineligibility, a vacancy occurs in the college of electors in any state, it is usually filled by appointment by the electors of that state themselves.

*Second*, after the electors have met for the purpose of choosing a President and Vice President, which Congress has provided shall be on the second Monday of January next succeeding the date of their election, they must proceed to do so by voting by *ballot*, for the reason that by this method it was hoped to preserve due secrecy and thus render the electors more independent. Since they have come to fill the capacity of mere voting machines, however, this provision, except so far as convenience is concerned, is of no practical value. But in no case can more than one of the candidates voted on for these high offices be a resident of the same state with themselves, as it was believed that should a different rule be permitted too much power might be given to one state.

*Third*, the electors, after they have thus met, must ballot for President or Vice President *separately*, as this tends to prevent mistakes or confusion in voting.

*Fourth*, a list must then be made by the electors of all persons voted for by them for President, and a like list of all persons voted for by them for Vice President, which lists must be signed and certified by all the electors in each state as genuine. Three sets of these lists are made out, all of them being exactly alike, one of which is sent to the President of the Senate by mail, another by special messenger, and the third is delivered to the United States district judge presiding over the district in which the electors meet. Should it chance to happen that the president of the Senate, on or before the fourth Monday of January, fails to receive either the one or the other of the two lists sent him from any state, then a special messenger must be dispatched by the Secretary of State to the district judge of the district in which the seat of government of such state may be located for the one in his possession. And,

*Fifth*, on the second Wednesday of February following the date on which the electors were chosen the President of the Senate, in the presence of both the Senate and House of Representatives sitting in joint session for that purpose, must cause these lists to be opened and read and the result announced. If from this result it appears that any Presidential candidate has received a majority of the entire number of electoral votes cast, he is thereupon declared elected. And if any candidate for Vice President has received a majority of all the electoral votes cast for that office, he is also thereupon declared elected. But if in either case no candidate has received a majority of the votes cast by all the electors, there can be no choice of President and Vice President, or either, by the electors, for they must choose on the first ballot or not at all.

SECOND PROCESS.—This mode or process is resorted to only after there has been a failure by the electors to choose either a President or Vice President, or both. If they fail to elect a President the right to do so devolves upon the House of Representatives, under the following restrictions:

*First*, the House of Representatives can vote for only such candidates for President as have received the three highest numbers of electoral votes. This is for the purpose of facilitating the election of a President.

*Second*, the vote must be by ballot, and this for the same reason that electors are required to vote by ballot.

*Third*, the balloting must be by states, each state having one vote, the same being cast for the candidate to whom a majority of the Representatives of such state present may direct. But if it should chance that the members of a certain state present and voting are equally divided, the vote thereof is not given to any candidate.

*Fourth*, before the House of Representatives can vote for a President, there must be a quorum present consisting of a member or members from at least two-thirds of the states. This is different than for ordinary purposes, when a majority of the entire number of Representatives elected are sufficient to constitute a quorum, and was probably suggested by the greater solemnity of the occasion.

*Fifth*, the votes of a majority of the states are necessary to a choice. This is in conformity with one of the fundamental principles of a representative government, that a majority rules. And,

*Sixth*, immediately after it is known that the electors failed to choose a President, the House of Representatives must proceed to do so; but if it also fails to elect one before the 4th of March, then the Vice President last elected becomes President. This is so provided for the reason that the old House of Representatives ceases to exist on that



day, a new one coming into power; and for the further reason that the President's term of office must commence on that day, at noon.

But if the college of electors fails to elect a Vice President, the right to do so does not devolve upon the House of Representatives, as is the case when they fail to elect a President, but upon the Senate, under the following restrictions:

*First*, the Senate can vote for only such candidates for Vice President as have received the two highest numbers of electoral votes. And,

*Second*, before the Senate can proceed to choose a Vice President there must be a quorum present consisting of not less than two-thirds of the entire number of Senators elected, but he may be chosen by a majority vote only,—not a majority of the votes of those actually present and voting, but a majority of all.

The XII. Amendment was adopted in 1804, and although it is incomparably more perfect than was the original Clause 3, yet is it in spite of that fact still very defective, in that it fails to make any provision as to the manner a disputed election of Presidential electors in any state shall be settled. The impotency of the Constitution in this respect was brought very forcibly and in an extraordinary manner to the attention of the people in 1876-77, and all but resulted in bringing on one of the bitterest political wars known to history. Hence, it seems but the part of reason that the Constitution should be amended in this respect, and it is to be hoped that such will soon be the case.

#### CLAUSE 4.

##### ELECTIONS, TIME OF.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Congress has long since availed itself of the power given it by this clause to determine the dates on which these elections shall take place, by providing that electors shall be chosen on the first Tuesday after the first Monday of November in every year the number of which is divisible by four, that being also the time when the representatives of every odd-numbered Congress are elected; and by providing further that on the second Monday of the January next succeeding the date of their election, the electors shall meet and cast their votes for President and Vice President.

The provision that these dates shall be uniform throughout the United States was inserted for the purpose of preventing fraud, and also for the purpose of convenience.

#### CLAUSE 5.

##### QUALIFICATIONS OF PRESIDENT AND VICE PRESIDENT.

No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office, who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States.

Under the provisions of this clause no person can become President of the United States unless he is a natural-born citizen thereof—one who is a citizen by right of inheritance, and not by adoption or naturalization. But it is not necessary that one, to be a natural-born citizen of the United States, must be born on American soil, as the children of American parents born in foreign lands are natural-born citizens of this Republic and may be elevated to the presidency. This requirement was inserted because of the importance of the office to be filled, and because of the bitter lessons of misrule that followed the mounting of the Princes of Hanover upon the triple throne. To us it seems a wise

and just provision—one the natural result of which is the placing by the people of more confidence in their chief executive.

But in order to show a sense of gratitude to those lion-hearted patriots, not natural-born citizens, who so unselfishly placed their lives and fortunes upon the altars of their adopted country during the stormy days of the Revolution, it was provided that all citizens of the United States at the date of the adoption of this Constitution, whether natural-born or not, should be eligible to the office of President. But as none of those revered persons now tread the hills and vales of earth in mortal garb, this provision is of course obsolete.

Neither is any person eligible to the Presidency unless he is thirty-five years of age or over, and this in order to allow the passions of youth to become moderated and the judgment to become more matured. Nor can even a natural-born citizen of the required age become President unless he has resided within the United States continually for a period of fourteen years. This is so provided in order to make all candidates for the Presidency familiar with the institutions of the land he aspires to govern, but whether this residence may be at any time between the date of his birth and that of his election, or must be immediately preceding such time, is a question left undecided by the Constitution. Many of the greatest lawyers and commentators hold to the former view, but we believe the same to be incompatible with the intention and spirit of the Constitution. Should their view be upheld, then the object of this provision might be wholly defeated, for in such event a natural-born citizen might spend the first fourteen years of his life here and the remainder up to the time of his election in some foreign land, thus rendering him entirely unfamiliar with our institutions, and probably somewhat estranged from

them. Hence, it is our firm belief, backed by what seems to us the only interpretation that this provision of the Constitution is susceptible of, that no person can become President of the United States unless he has resided therein at least fourteen years *next preceding* the date of his election. But it must be remembered in this connection that a person may still be considered as residing within the United States even if he is in foreign lands, providing he is serving them in some official capacity, or as a soldier or sailor.

According to the provisions of the XII. Amendment the Vice President must have the same qualifications as the President. Hence, it follows that no person is eligible to the Vice Presidency unless he is at least thirty-five years of age, a natural-born citizen of the United States, and has resided at least fourteen years in the United States next preceding the date of his election, and this for the reason that he may become President.

#### CLAUSE 6.

#### VACANCIES.

In case of the removal of the President from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The office of President may become vacant because of any one of five reasons, to-wit: By impeachment and removal of the President; by his death; by his resignation; by the failure of both the college of electors and the House of Representatives to choose a President prior to the 4th day of March next succeeding the date on which the electors are chosen; or by such disabilities as insanity or severe and



long continued sickness. When a vacancy occurs because of this latter reason, however, it continues only until the disability is removed. When such is the case, the President again assumes the powers and duties of his office. But the mere absence of the President from the seat of government does not create a vacancy, unless, perhaps, he should journey beyond the jurisdiction of the United States, but in such case he would vacate his office only during the time of his absence. Nor is his office vacant during the time an impeachment case is pending against him. It can only become such on this ground after the Senate has passed its judgment of removal.

Since, as we have seen, the office of President may become vacant because of any of the foregoing reasons, the wisdom of providing through the Constitution a mode or rule for filling the same became very apparent to the fathers, in order to forestall or prevent the possible contingency of anarchy and confusion resulting from the occurrence of a vacancy in this high and important office. Hence, it was prescribed that should such a vacancy occur, it may be filled in one of two ways: First, if there is a Vice President, by his succeeding to the President's chair; and second, if there is no Vice President, or he is also incapacitated, then the Congress may provide by law what officer of the United States shall act as President. Under this authorization Congress has placed the succession in the cabinet in the following order: Secretary of State, Secretary of the Treasury, Secretary of War, Attorney-General, Postmaster-General, Secretary of the Navy, and Secretary of the Interior.

When the Vice President, through a vacancy, becomes President, he serves for the unexpired term of his chief, unless it be because of some temporary disability on the part of the President, in which case he acts as President only until such disability is removed. But if the Secretary

of State or some other cabinet officer, because of the death, removal, resignation or incapacity of both the President and Vice President, is called to fill the vacancy, he is simply acting as President, and can hold the office only until the next autumn following the occurrence of such vacancy, at which time a special election must be held for the purpose of choosing a President to fill the unexpired term, unless the vacancy occurs during the last year of the President's term, in which case he retains the office of Acting President until the new President is inaugurated.

#### CLAUSE 7.

##### SALARY OF PRESIDENT.

The President shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

The reason for the provision that the President shall receive compensation for his services was to enable persons of moderate means, if otherwise qualified, to aspire and be elected to the office of President. But the amount of this compensation is left entirely to the judgment of Congress, with the restriction that it can neither be increased nor diminished during the President's term of office. Congress at first placed this compensation at \$25,000 per year, but in 1873 raised it to \$50,000 per annum, which is the salary now allowed. Besides this, Congress also appropriates to the President's use from time to time the amount of all special expenses he is called upon to meet, and has furnished him with a dwelling in which to live—the executive mansion, or White House. The chief executive of no nation receives so small a compensation as does that of our own, considering its resources, wealth and size.

The Vice President, when acting as such, receives a salary of \$8,000 per annum. When acting as President, he receives the same compensation as does the President.

The provision that the President's salary must be neither increased nor decreased during his term of office, and that he shall accept no other emolument from the United States, or any of them, was inserted for the purpose of making him entirely independent of the blandishments of Congress and of the state legislatures on the one hand, and on the other to remove from him all temptation to either try to bribe the Congress for his own pecuniary welfare or to submit to the sinister designs of the states.

#### CLAUSE 8.

##### OATH OF OFFICE.

Before he enters on the execution of his office, he shall take the following oath, or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States."

The President, before he can enter upon the performance of the duties of his office, must take an oath or affirmation pledging himself to do two things: First, to faithfully perform the duties incumbent upon the office of President of the United States; and, second, to the best of his ability to preserve, protect and defend this Constitution. The purpose of this is to indelibly impress upon his mind the duties and responsibilities of his high office, and to constantly remind him that he is but the servant of the people.

The oath of office may be administered to the President by any judge or other person authorized to administer oaths, but it has become the custom to have the Chief Justice of the United States Supreme Court, who is in rank next to the President, perform this duty.

## SECTION 2.

## POWERS AND DUTIES OF THE PRESIDENT.

## CLAUSE 1.

## SOME SOLE POWERS OF THE PRESIDENT.

The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon the subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

Under this clause the President is made the repository of three sole powers, to-wit: First, the power to command absolutely the army and navy of the United States; second, the power to require his cabinet officers to make reports to him, in writing, on any subject relating to the duties of their respective offices; and third, the power to grant pardons and reprieves for offenses against the United States, except in cases of impeachment.

I. COMMANDER-IN-CHIEF OF ARMY AND NAVY.—The reason for conferring upon the President this absolute power is because elsewhere in the Constitution it is made his duty to execute the laws, and to do so sometimes requires force, and at nearly all times a show of force. Then, again, it is also his duty to protect the nation from invasion and insurrection, and in order to do so effectually and at a moment's warning, the necessity of reposing in him the absolute power to direct the army and navy at all times becomes plainly apparent. But even though it is natural and necessary for the President, as the chief executive of the nation, to have sole command of the army and navy, yet this power thus reposed is fraught with



much danger to the liberties of the people, and unless properly hemmed in by laws "as binding as the admiralty laws of Oleron, which changeth not," it might become in the hands of an ambitious and unscrupulous man the willing servant of tyranny and injustice and the most deadly foe to free institutions. Hence, in order that this two-edged power might be robbed of its possible sting, the framers of the Constitution took good care to repose in Congress, as we have heretofore seen, the sole power both to prescribe general rules for the government of the army and navy and to appropriate money for their support, as well as to regulate the size of either or to abolish them altogether. Under these restrictions it is hardly possible for the President to misuse this power.

In ordinary times the President's power to command extends only to the regular army and navy of the United States, but in times of war it extends also to the volunteer army and to the militia of the several states, when in the actual service of the national government. At all other times the militia is under the command of the governor of the state to which it belongs.

And although the President is commander-in-chief of the army and navy, yet it does not necessarily follow that he must take the command of them in person. Thus far no President has ever done so, but has left their command to certain officers appointed by him for that purpose, whose duty it is to carry out as best they can his general orders or instructions.

II. REPORTS OF CABINET OFFICERS.—The fathers, recognizing the fact that it would be utterly impossible for the President to personally oversee the execution of all the laws, therefore through the provisions of this clause impliedly authorized Congress from time to time as necessity might require to establish new executive departments to

aid him in this respect. But as he is personally responsible for the due execution of all the laws, the further provision that the heads of these departments, after his having made a demand therefor, must submit to him written reports concerning the condition of affairs under their direction and control, was inserted, thus making them in turn responsible to him. These heads of departments collectively constitute what is known as the President's Cabinet, or Advisory Council, and all but two of them have the title of Secretary. They are appointed by the President, with the consent of the Senate, and can be removed at any time by the same power that appointed them.

Thus far Congress has provided for eight executive departments, the names of which and the titles of the heads of which are as follows:

NAME OF DEPARTMENT.	TITLE OF HEAD.
Department of State . . . . .	Secretary of State.
Treasury Department . . . . .	Secretary of the Treasury.
War Department . . . . .	Secretary of War.
Department of the Navy . . . . .	Secretary of the Navy.
Department of the Interior . . . . .	Secretary of the Interior.
Postoffice Department . . . . .	Postmaster General.
Department of Justice . . . . .	Attorney General.
Department of Agriculture . . . . .	Secretary of Agriculture.

These departments are all in their turn divided into a certain number of bureaus, at the head of each of which there is a chief, under whom is a force of clerks, book-keepers, stenographers, etc. These chiefs are in their turn responsible to the heads of their respective departments. The duties and organization of each of them is as follows:

DEPARTMENT OF STATE.—This department is divided into three bureaus: The Domestic Bureau; the Diplomatic Bureau; and the Consular Bureau. The office of the first of these is to keep the originals of this Constitution and of all laws and public documents, such as treaties, Presi-

dents' proclamations, correspondence with foreign nations, etc.; to issue warrants to foreign powers for the extradition of criminals; to issue passports to American citizens who wish to travel abroad; and to keep the great seal of the United States. That of the second is to have charge of all political relations with foreign nations and conduct all correspondence relating thereto. This is done mainly through our Ministers residing at the courts of such nations. Those sent to powers of the first class are called *Ministers Plenipotentiary*, while those sent to powers of the second and third classes are called *Ministers Resident*. The duties of both are the same, however. They are appointed by the President with the concurrence of the Senate. And that of the third is to have charge over our commercial relations with foreign nations. This is done through Consuls, the duties of whom are to guard and further our commercial interests abroad and to protect the rights of our seamen. And as American citizens, while in non-Christian countries such as Turkey, Persia and China, are subject only to United States law, it is also the duty of our Consuls residing in those lands to administer American law.

**TREASURY DEPARTMENT.**—This department, as its name signifies, has general charge over everything that pertains to the monetary receipts and expenditures of our government. Under its direction, too, is money coined and paper currency issued and redeemed, as well as the carrying out of all provisions the aim of which is to make navigation safe, such as the building of breakwaters and lighthouses, the dredging of harbors, etc. There are two Assistant Secretaries of the Treasury, appointed in the same manner as is the Secretary, and many thousands of clerks, revenue inspectors, detectives, etc., scattered all over the country.

**WAR DEPARTMENT.**—This department has charge of everything that relates to the executive control of the

army. The chiefs in charge of all its bureaus are army officers, though it is not necessary that the Secretary himself should be one. As might be expected, under the supervision of this department is the United States Military Academy at West Point.

NAVY DEPARTMENT.—This department has charge of everything that pertains to the executive control of the navy. Among other things, it has supervision of the construction of ships of war and of the construction of ordnance, as well as of the United States Naval Academy at Annapolis.

INTERIOR DEPARTMENT.—Of all the departments this one has the greatest diversity of duties, it having charge of all matters domestic relating to the Executive Department of the government. Patents, pensions, etc., are granted or denied under its direction. It has charge of and conducts the sales of all government lands; of all dealings with the Indians; of the taking of the census, and of education. The chiefs of its bureaus are called Commissioners, except of the Census Bureau, who is called a Superintendent.

POSTOFFICE DEPARTMENT.—Under this department is conducted all business relating to the executive control of postoffices and post roads throughout the United States. It is the department with which the people generally are most familiar, the beneficence of which is a question beyond controversy.

DEPARTMENT OF JUSTICE.—This department has charge of and conducts all suits for or against the United States. Its head is also the legal adviser of the several departments of the government. All District Attorneys and Marshals of the United States are under the direction of this department.

AGRICULTURAL DEPARTMENT.—This department was established in 1889, and its duties are such as its title would suggest—the furtherance of our agricultural interests.



As has been hereinbefore stated, the heads of all of these departments collectively constitute what is called the President's Cabinet or Advisory Council. The Cabinet is not a legally created institution, but is the outcome of a practice commenced by Washington, confirmed by Jefferson and continued by their successors ever since. It is simply a sort of impromptu advisory board summoned by the President to meet at stated or regular times for the purpose of enabling him to consult with its members concerning important matters of state. But he is not bound by their counsels, and may follow them or not as he thinks best. But as a general rule the Presidents have moulded their acts according to the opinions of a majority of the members of their respective Cabinets. The proceedings had at each Cabinet meeting are usually kept secret.

III. PARDONING POWER.—This clause also gives the President the power to pardon, reprieve or commute all offences committed against the United States, and this whether they are military or naval offenses or the criminal offenses of civilians. But the offenses must be against the United States and not against any state. Offenses against the states are punished only by the states. By virtue of this clause the President is empowered to grant either conditional or absolute pardons, or one to take effect at some future time; to commute a sentence to one less severe; to suspend for a time the punishment of one condemned to die, which is called reprieving; to remit fines, penalties and forfeitures imposed for a violation of the revenue laws, etc.; and to stop at any time criminal proceedings carried on in the name of the United States, by directing the Attorney General or one of his subordinates to enter a *nolle prosequi* (I do not care to prosecute further).

The reason for permitting the exercise of this power is two-fold: First, it has been the experience of all civilized

nations in administering justice that at times persons entirely innocent are convicted of crime by mistake, or because of suborned witnesses, or because of unreasoning public opinion or prejudice, and that persons guilty are sentenced to a punishment greater than they merit; in which cases the pardoning power is a very beneficent one, indeed, and is decked with the spirit and paraphernalia of justice. And second, it sometimes happens that it is impossible to prove a number of persons guilty of a crime, except upon the testimony of one of their own number, which testimony will be given only after the witness has been assured that he will not be punished for his share in the commission of the offense; in which event the reason for this power is very plain.

But there is one limit to the President's power in this respect, in the matter of all cases of impeachment. This was inserted because an impeachment is a political offense, and not a criminal one, and as the President has at least some voice in the appointment of all officers liable to impeachment, this limitation was placed upon his pardoning power in order to prevent him from shielding his ministers. Then, too, the President is himself liable to impeachment, and to permit him to issue his own pardon would be an act of utter folly.

## CLAUSE 2.

### POWERS SHARED JOINTLY WITH SENATE.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors and other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they may think proper, in the President alone, in the courts of law or in the heads of departments.

IV. TREATY-MAKING POWER.—The President is given the power to make and enter into treaties by the Constitution for the reason that it is the custom of all governments to repose in their executives the power to do so, and for the further and better reason that it is often necessary to conduct negotiations with foreign governments with secrecy and dispatch, which we could hardly expect to be possible if the Congress had the sole power to make and enter into treaties. But as ours is a representative government, it is but just and right that the people should also have a voice in the exercising of a power that might mean so much to their future happiness and welfare. Hence, it is provided that before a treaty can go into effect it must receive the approval of not less than two-thirds of the Senators present at the time the treaty comes up before the Senate for its consideration. But the President may enter into a treaty and make all negotiations concerning same without the “advice” of the Senate, which is seldom asked, but the treaty thus made and the negotiations thus entered into are subject to the approval or disapproval of the Senate. There are several instances on record of the Senate refusing to approve a treaty proposed and entered into by the President.

But whether the President and Senate can make a treaty necessitating the payment of money out of the United States treasury, without the consent of the House of Representatives, is still an undecided question. All bills appropriating money must originate in the House of Representatives, and one thing is certain, that both the President and the Senate combined cannot compel the House to appropriate money if it does not wish to do so. But as a treaty requiring the payment of money, and which has been properly entered into by the President and the Senate, at least binds the honor of the nation, the House has never

yet felt that it was justified in refusing to appropriate the necessary amount, though it has done so several times under protest.

V. APPOINTING POWER.—This clause also gives the President the sole power to nominate, and with the advice and consent of the Senate, to appoint all civil officers of the United States whose appointment is not otherwise provided for in this Constitution, except such inferior officers as Congress consents to allow him or the courts or the heads of departments to appoint without the consent of the Senate. The nominations are made by the President sending to the Senate a communication, in writing, designating the persons he wishes to appoint and the positions he desires each of them to fill. If the Senate approves the nominations, the parties nominated thereupon receive their appointments and commissions. But the Senate very often refuses to confirm the President's nominations, in which case he usually sends in others forthwith. During the recess of the Senate, however, the President has the power to make a temporary appointment which holds good until the end of the following session of the Senate (see next clause).

It will be noticed that all civil officers of the United States, the President and Vice President only excepted, are appointed, whereas most of the state, county and other municipal officers are elected by the people. The reason for this is that, as it was the practice both in England and in the original thirteen colonies at the time of the adoption of this Constitution to appoint nearly all their civil officers, when the latter formed themselves into an independent nation it was incorporated in their fundamental law and has never since been changed.

The power to appoint, when unlimited, necessarily carries with it the power to remove. This question was settled in Washington's administration, to the extent that the Presi-



dent can remove all officers whom he can appoint, with the exception of United States judges, who hold office for life, or "during good behavior." But during Johnson's administration a bill was passed, known as the "tenure-of-office act," providing that those civil officers of the United States who were appointed by the President with the consent of the Senate could be removed only in the same way. Also, another bill was passed declaring that no naval or military officer could be removed from the service in times of peace, except upon the sentence of a court-martial. The former of these bills, however, was afterwards amended, so that as the law now stands the President is given the power to suspend an officer until the end of the following session of the Senate, and make a temporary appointment in his place. If the senate during such session, however, refuses to consent to the removal of the old officer, he is again reinstated. But it will be seen that should the President be obstinate he can again suspend such reinstated officer and make another temporary appointment to fill the vacancy caused by the suspension. This mode of procedure, however, is very bad practice, as it tends to engender a feeling of hatred and distrust between the President and the Senate, and hence has seldom been resorted to.

The term for which all Federal appointees hold office is for four years, unless sooner removed. But they may be removed for political reasons, as well as for their unfitness. During the early administrations the President in office made but few removals, and those only when such a course was necessary to improve the service. But in 1829, Andrew Jackson, upon his election to the Presidency, introduced the proposition into our politics which has been followed ever since, that "To the victor belongs the spoils," and removed from office all persons who were active in opposing his election, filling the vacated positions with partisans of his

own. The effect of these changes, contrary to the expectations of many, has not been at all disastrous to the conducting of the business of the government, but their effect upon the politics of the country is quite a different thing. Well has it been said that "While politics have not very largely corrupted the civil service, the civil service has greatly corrupted politics." So glaring, indeed, did this evil become at times that under the lash of public opinion Congress was prompted during Mr. Cleveland's term to pass a law providing that the appointees of certain branches of the civil service should, if they wished, hold their respective offices as long as they performed their duty well, and that vacancies should be filled by means of a competitive examination, coupled with the further and very important provision that the enforcement of this law in certain respects should be left entirely to the judgment of the President. Hence, as the law now stands, the President has the power to enforce it either in whole or in part, or not at all, as he sees fit. Under President Cleveland it was quite rigidly enforced, but under his successors there has been a considerable backslide towards the spoils system. It is our opinion, however, that in the not distant future public sentiment will compel the passage of an iron-clad civil service reform law—one that cannot be used to corrupt the politics of the country by any party or President whatsoever.

The object of the framers of the Constitution in allowing Congress to authorize the President, or the courts, or the heads of departments, as the case may be, to have the unlimited power to appoint certain inferior officers without the consent of the Senate was two-fold: First, to avoid taking up the valuable time of the Senate with the consideration of the appointment of a horde of petty officers; and, second, so far as the courts and the heads of departments are allowed to appoint, to avoid taking up the time of the

President for a like reason. Congress has long since exercised this power and has authorized the appointment of the following officers in the following manner:

1. All postmasters receiving salaries less than \$1,000 per annum are appointed by the Postmaster-General.

2. Most bookkeepers, stenographers, clerks, etc., under the departments at Washington are appointed by the heads of their respective departments or of the bureaus thereof. But the chiefs of bureaus and the more important officers in each department are appointed by the President with the consent of the Senate.

3. The clerks, bookkeepers and other subordinates in each custom house are appointed by the Chief Collector thereof.

4. The Clerks of United States courts are appointed by the courts themselves. But United States District Attorneys and Marshals are appointed by the President with the consent of the Senate.

All these inferior officers can be removed at any time by the same power that appointed them.

### CLAUSE 3.

#### APPOINTMENTS.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Vacancies in appointive offices very frequently occur, and this either because of physical reasons or because of a suspension by the President. But as the Senate is not always in session, and it would be decidedly unprofitable, as well as inconvenient, to convene it merely for the purpose of acting on nominations made by the President whenever a vacancy might take place, this provision authorizing the

President to make temporary appointments to fill vacancies occurring during the recess of the Senate was inserted. But the President is not compelled to make such appointments, and unless the same must be made directly in order that public business might not be hampered or delayed, it is usually the custom of the President to leave such office vacant until the next session of the Senate.

### SECTION 3.

#### OTHER DUTIES OF THE PRESIDENT.

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may on extraordinary occasions, convene both Houses or either of them, and in case of disagreement between them, with respect of the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws are faithfully executed, and shall commission all of the officers of the United States.

Under this section six duties are conferred upon the President, as follows:

*First*, he must from time to time inform Congress of the condition of the Union, and also recommend to its consideration such measures as in his opinion should forthwith be incorporated into laws. This is complied with by the President sending to Congress at the beginning of each regular session a message which contains a general account of the doings of the Executive Department during the year just past, a brief summary of the reports of the several departments and such suggestions and recommendations in regard to future legislation as he believes to be needful and necessary. It is also the custom of the President, when Congress is called to meet in extraordinary session, and at other times, to send it a special message for the purpose of making such recommendations or giving such information as the exigen-



cies of the hour may demand. But Congress is not bound to follow the recommendations and suggestions of the President, and it has often refused to do so. The first two Presidents, Washington and Adams, went to Congress in person and delivered their messages, receiving at the time a reply from each House. But when Jefferson became President he sent a written message and expected no reply thereto, which has been the custom followed by all of his successors.

*Second*, for fear of the unexpected arising of special or extraordinary emergencies during the recess of Congress, which emergencies might demand its immediate action and attention, the President at such times is given the power by this clause to convene the Congress in special session. Thus far this has been done but twelve times. But the President frequently convenes the Senate in extra session at the close of a regular session for the purpose of considering appointments. It is the custom of the Presidents, when they call a special session of Congress, to name in their proclamations or special messages the reasons for which it was assembled. Congress is not confined merely to a consideration of those matters, however, but is at liberty to consider all other matters it so desires. Nor is there any limit to the time during which it may sit, except, of course, that it must terminate by limitation. Congress may also provide by law beforehand for the holding of a special session. This is done by adjourning at the end of a regular session to a time certain, which time certain must be between the date of such adjournment and the date on which the next regular session convenes. But if it adjourns *sine die*, it cannot again meet before the date on which the next regular session convenes, unless upon a call by the President.

*Third*, this section makes it the sole duty of the President to receive all ambassadors and other public ministers from foreign nations. To "receive" an ambassador is to recog-

nize the country he represents as an independent sovereignty. But before an ambassador can be "received" or perform any public act he must present his credentials to the President at a formal audience held for that purpose, which is identical to what our ambassadors must do before they can be "received" at the courts of other nations. But the President is not compelled to receive all ambassadors having the requisite credentials, as in case of those representing countries that have not been generally recognized as independent sovereignties. And the President can also dismiss an ambassador already received if he is personally objectionable to our government, in which case the country he was commissioned by appoints another in his stead; or if the ties of friendship between the nation he represents and our own are broken or greatly strained. Our ambassadors may be rejected or dismissed from the courts of other nations for the same reasons that we can reject or dismiss theirs. Nations at the time of declaring war against each other invariably recall their ambassadors, thus avoiding the humiliation of having them haughtily dismissed.

The student will readily perceive that this duty of the President to receive ambassadors is at times one fraught with grave responsibility, and its nature can at once be understood when we consider that had any foreign nation during our Civil War recognized the ambassadors of the Confederacy, such act would at least have interrupted our friendly relations with that nation, and perhaps would have led to open war between it and our own.

*Fourth*, by virtue of this section the President has also the power to adjourn Congress to such time as he thinks proper, in case they cannot agree between themselves as to the time of adjournment. But in any event he cannot adjourn it for a longer time than until the date fixed by law for the next regular session. The President has not as yet

been called upon to exercise this power, but the time may come when the value of giving it to him will be plainly seen.

*Fifth*, the duty imposed upon the President by this section to execute the laws of the land is by far the most important of them all. But this provision must be understood as meaning that the President directly, and through the executive officers under his direction indirectly, must enforce such laws only as are on the statute books, and this whether he believes such laws to be wise ones or not. And he must enforce them in the manner prescribed by law. If he attempts to enforce that as law which is in reality not law, or to enforce that which is law in a manner not authorized by law, or refuses or fails to enforce in a legal manner that which is law, he is amenable to the courts in the same manner as is any other officer, be he high or low. And,

*Sixth*, under this section it is made the duty of the President to present each officer appointed by him, which appointment has received the approval of the Senate (except during its recess), with a writing to the effect that such officer has been appointed to a certain office, which writing must be signed by him and have the great seal of the United States affixed thereto by its keeper, the Secretary of State. This writing, thus signed and sealed, is called a *commission*. The reason for issuing commissions to such officers is to enable them without delay to show the source of their authority should the same be questioned, and thus protect the people in a great measure against the impositions of pretenders. But the President is not now called upon under this clause to commission such inferior officers as are appointed by the courts or by the heads of departments, though Congress has the power to require him to do so.

But it must be borne in mind that the *acceptance* of a commission or appointment is a necessary ingredient to its validity. If the party commissioned or appointed to a cer-

tain office refuses to accept the same, such commission or appointment is void and another must be made which will be accepted.

## SECTION 4.

### IMPEACHMENT OF CIVIL OFFICERS.

The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery or other high crimes and misdemeanors.

From this section we learn that only "civil officers" of the United States can be impeached. But who are such civil officers? Within the meaning of this section they are all judicial and executive officers of the United States, with the exception of military and naval officers, who are tried by court-martial. But Senators and Representatives cannot be impeached, as they do not come within the definition of civil officers of the United States, but are instead the national representatives in Congress of their respective states; although, as we have seen, they may be expelled by their respective Houses.

These "civil officers" may be impeached and removed from office for three causes only. First, for treason, which is defined elsewhere in this Constitution as consisting in "levying war against the United States, or in adhering to their enemies, giving them aid or comfort"; second, for bribery, which, as the term is herein applied, means the using of his office by an executive or judicial officer in such a manner as to be of advantage to some one, such officer actually receiving for such service either a pecuniary consideration or the promise of some future reward; and third, for "other high crimes and misdemeanors," which may mean anything that Congress from time to time, as necessity requires, shall define as such.



## ARTICLE III.

## THE JUDICIAL DEPARTMENT.

In the foregoing two articles we learned of the Legislative Department, whose office it is to *make* the laws, and of the Executive Department, whose office it is to *enforce* the laws. In this article we will learn of the third and last department of our government, the Judicial Department, whose office it is to *apply* and *interpret* the laws. Thus, if a person is accused of the commission of some crime and arrested therefor, it is the duty of the Judicial Department to determine, in view of the facts proven, whether or not the law *applies* to that particular case, and if so, to what *extent*. So with civil suits. In such cases it is likewise the duty of the Judicial Department to determine, in view of the facts deduced in the case, to what extent the law applies to the question or questions in dispute between the parties thereof. But the Judicial Department does not take cognizance of the *interpretation* or *application* of the laws unless the matter is brought directly before it by means of a suit or other legal proceeding instituted for that purpose.

It is the duty of this department, also, to pass upon the constitutionality of laws and to determine just what they mean; or, in other words, to *interpret* and *construe* them. There is often a controversy over the meaning of a certain law, one party contending that it favors him and the other contending directly the reverse, whereupon the courts are often called upon to decide the question in dispute. In doing this they always take into consideration the intention and object of the Legislative Department in passing such law. The constitutionality or unconstitutionality of laws are determined in the same manner. Most laws are either

entirely constitutional or entirely unconstitutional. But there are some that are unconstitutional in part only and constitutional as to the remainder. In such cases, if the constitutional part is so independent of that which is unconstitutional as to permit of its standing alone, it must be upheld and enforced; but if otherwise, then the whole law must be declared invalid. All courts—even justices of the peace and police courts—have the power to decide as to the constitutionality of laws in matters over which they have jurisdiction, but such questions are never put beyond dispute until the United States Supreme Court, in case of United States law, and the state supreme courts in case of state law, finally determine them.

## SECTION I.

### ORGANIZATION.

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges of both the supreme and inferior courts shall hold their offices during good behavior, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office.

Thus, we see that the Judicial Department of the United States consists of one Supreme Court and as many inferior courts as the Congress may from time to time, as may be demanded by the increase of business, ordain and establish. The creation of the Supreme Court by the Constitution is considered as its master-stroke, it having no prototype in the history of the World. But although the Supreme Court is a creature of the Constitution and can only be abolished by the power that gave it existence, yet the number of judges of which it shall be constituted was wisely left to the discretion of Congress, so that its organization can be changed from time to time as circumstances may demand.

As now organized this very important court is composed of one Chief Justice, who presides over the same, and eight Associate Justices.

Of the inferior courts, their number and manner of organization has been changed from time to time by Congress because of the rapid growth of the nation and the consequent increase in business, until they are now as follows: Nine United States Circuit Courts of Appeals, each of which is composed of one Justice of the Supreme Court and two Circuit Judges, but in case of the absence of any of these a District Judge may be called to serve in his place; nine United States Circuit Courts, each of which is composed of one Justice of the Supreme Court, one Circuit Judge and one District Judge, but any two of these officials may hold court; and United States District Courts, one at least of them being in each state, each of which is composed of one District Judge. Besides these there are several special courts created by Congress under this section, as follows: One United States Court of Claims, composed of one Chief Justice and four Associate Justices; one Supreme Court for the District of Columbia; composed of one Chief Justice and four Associate Justices; and United States territorial courts in each organized territory. The latter two classes, however, are not, strictly speaking, United States courts, but simply local courts.

The judges of all of these, except those of the territorial courts, hold their respective offices "during good behavior," which virtually means during life. The only way they can be removed is by impeachment, though they may vacate their offices by resignation. But if any one of these judges has served not less than ten years and is seventy years of age he is entitled to his full salary during the remainder of his life, and this whether he serves after that time or not. The object held in view by the fathers when they inserted

this provision was to raise these judges above temptation and make them independent in their decisions. And to what extent they succeeded in their purpose let the long and almost untarnished list of our Federal jurists proclaim.

This section also gives Congress power to fix the compensation which shall be received by each of these judges or justices, including those of the Supreme Court. At the present time their salaries range from \$5,000 to \$10,500 per year. But this power is limited by the provision that such salaries shall not be diminished during their continuance in office, though they may be increased at any time, and may be decreased to take effect as to all judges appointed after the passage of the law. The object of this provision is to make the judicial branch entirely independent of the legislative.

## SECTION 2.

### JURISDICTION OF UNITED STATES COURT.

#### CLAUSE 1.

##### EXTENT OF JURISDICTION.

The judicial power shall extend to all cases, in law and equity, arising under the Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state and the citizens thereof, and foreign states, citizens or subjects.

The office of this clause is to define the extent of the jurisdiction of the United States courts in all cases of law and equity that may come before them under certain conditions which we shall hereafter note and examine. But before doing so it boots us to determine what is meant by the



word "cases" and the phrase "in law and equity," in order that we may understand the better what the powers of these courts really are. A *case* is a state of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice. But before a court of justice can exercise jurisdiction over the state of facts as furnished by a case, such case must be brought before it in the shape of an *action or suit at law*, or in the shape of an *action or suit in equity*, for courts cannot either apply or interpret the law unless the question in dispute is brought before them in a legal manner. The chief distinction between the two classes of actions is in their modes of procedure and in the relief obtained. In a civil action *at law* relief in damages only is granted, and the questions of fact in dispute must be tried by a jury, unless the same is waived, and the questions of law by the court. In a criminal action at law the questions of fact must also be tried by a jury and those of law by the court. Criminal cases, however, cannot be tried in equity, but only in a suit at law. But it sometimes happens, in cases of a civil nature, that the *relief* awarded by an action at law, to-wit, damages in money, would not be an adequate and complete relief for the wrong done. For instance, suppose that in the year 1900 you took up a ranch on Nameless Creek, in the county of Somewhere, and with the ranch the first right to use the waters of said creek for the purpose of irrigating the same. Then suppose that early in 1901 another person took up a ranch on the same creek and above yours, and appropriated all the waters contained therein to his own use, leaving you without any and consequently destroying your crops. Of course you are entitled to relief for the injury done you, but by what means would you obtain that relief? If you brought an action at law against the party injuring you, you could obtain a judgment in damages against him, but he might

not be worth anything and then, too, there would be nothing to prohibit him from again appropriating your water and destroying your crops in the year 1902 if he was so minded, and thus on indefinitely. In other words, no adequate and complete remedy is afforded you in a suit at law. In order to attain that desirable result you must resort to a suit in equity, which will give you full and complete relief by perpetually enjoining said party from using or detaining so much of the waters of said creek as were originally appropriated and used by you for the purpose of irrigating your ranch. This is only one of many instances in which relief can be obtained by means of a suit in equity; but if a suit at law affords a complete and adequate relief, a suit in equity cannot be brought.

In England and in some of the states the courts granting equity relief and those granting relief at law are *separate* and *distinct* from each other. In other states the same courts grant both legal and equitable relief, and this in the *same* action. But, as will be noticed, the courts of the United States, as well as those in still other states, grant both equitable and legal relief, but in *different* actions having a *different* procedure.

Having now learned what *kinds of relief* the United States courts can give and the *manner* in which it can be obtained, it at this time boots us to inquire into the *kinds of cases* at law and in equity that these courts can take jurisdiction of and grant relief in. By carefully taking note of this clause we find that the framers of the Constitution divided them into nine kinds, and in the order following:

*First*, the United States courts can try all cases arising under the Constitution, laws and treaties of the United States. This is because these courts were mainly constituted for that purpose, and they are the only ones that common sense and good judgment would suggest should

have jurisdiction over such cases. This provision, however, does not, as is claimed by many, impliedly or otherwise permit the courts of the United States to take jurisdiction of cases arising under the common law, which consists of those customs and usages having the effect of law because of their antiquity, most of which were bequeathed to the colonies by the mother country and retained by them after they had won their freedom and independence. This is because the Departments of the national government can exercise only such power as is expressly or impliedly given them by the Constitution, and nowhere in that instrument is its Judiciary Department in any manner authorized to take jurisdiction of cases arising under the common law. In construing and interpreting the Constitution, laws and treaties of the United States, however, the courts thereof always have recourse to the common law for the definition of terms.

*Second*, they can also try all cases affecting ambassadors, other public ministers and consuls, but as this provision means only all cases affecting them in their public capacity, it is provided by the law of nations that all cases affecting them in their private capacity must be tried by the laws of the country they represent. The reason for this is that as these are officers of foreign nations whom the United States is bound to protect, it being responsible for their treatment, as an act of respect and courtesy to the country they represent, all cases affecting them should be tried in the United States courts, and not in the courts of any state.

*Third*, under the Constitution United States courts have exclusive jurisdiction over all cases arising under the admiralty and maritime law of the nation; that is, of all cases of either a criminal or civil nature originating on the high seas or on our navigable waters (Article I., Section 8, clauses 10 and 11). The reason for this is that most if

not all admiralty and maritime cases arise without the jurisdiction of the states and hence should be tried by the national courts.

*Fourth*, all controversies in which the government of the United States, either as plaintiff or as defendant, is a party must be tried in the United States courts, and this for the reason that as such controversies are of interest to the entire nation, they should not be left to the courts of the several states. The United States is *plaintiff* in all criminal cases prosecuted by it because of a violation of its law, and in all civil cases brought by it because of some legal claim it may have against one or more parties. But as the United States is a sovereignty, it cannot be made a *defendant* in any event, unless it consents to permit itself to be sued. This the government has done, and has constituted the Court of Claims for that purpose, which is the only court in which one having a claim against it can have his rights determined in case the proper officers refuse to allow the same.

*Fifth*, all controversies between two or more states must also be tried in the courts of the United States. This is because it is evident that these controversies could be tried nowhere else with propriety, unless it were possible to settle them by arbitration. And then we must remember that it is one of the chief duties of the national government to "insure domestic tranquillity," which it could not do unless its courts had jurisdiction to try cases of this nature.

*Sixth*, all controversies between a state and the citizens of another state are by this clause made triable in the United States courts. But this provision has been greatly modified by the XI. Amendment to this Constitution, which amendment reads as follows:

"The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against any of the United States by citizens of another state, or by citizens or subjects of any foreign state."



Hence, under this provision as amended the states cannot be made *defendants* in the United States courts in suits brought against them by citizens of other states, or by citizens or subjects of foreign states, but such suits must be brought in the state's own courts, if it permits itself to be sued, and this for the same reason that suits against the United States must be brought in United States courts. But if a state is *plaintiff* in an action between itself and the citizens of another state, such action may be brought in the national courts. This latter was to avoid any irritation or bad feeling that might arise in case a state was compelled to sue the citizens of another state in the courts of such state.

*Seventh*, this clause also permits controversies between citizens of different states to be brought in the United States courts. But the party or plaintiff bringing such controversy must commence same in the United States court having jurisdiction over the state or district in which the defendant resides, and the suit must be tried according to the laws of such state. Thus, if a citizen of California owes a citizen of Montana a sum of money exceeding the sum of \$2,000, the citizen of Montana may sue him in the United States Circuit Court having jurisdiction over any of the districts in California; but such court will try the case according to the laws of California, and in satisfying any judgment that may be recovered the citizen of California will be entitled to the exemption allowed him by his own state laws. The reason for this provision is that although controversies of this nature do not arise under United States law, yet in order that both parties may secure a more impartial trial than could likely be had in the courts of any state where local prejudice or undue influence might tamper with the scales of justice, it was thought best to give the United States courts jurisdiction over such cases.

*Eighth*, controversies between citizens of the same state claiming lands under grants of different states may also be brought in the United States courts, and this for the reason that although the states are not direct parties to the action, yet indirectly they are involved in it, and hence it would be a flagrant bid to partiality, local prejudice and injustice to allow either of them to decide the controversy. This provision is at the present time of very little value, however, as the boundaries of each state and territory are now well-defined, and hence none of them can scarcely grant lands to which they have not a good and perfect title. But during the early days of the Republic, when state lines were loosely drawn and state jealousy still ran high, it was of the utmost importance in securing justice to the parties and in preventing state feuds. And

*Ninth*, all controversies between states, or the citizens thereof, and foreign states, citizens or subjects may likewise be brought in the national courts, subject to the provisions of the XI. Amendment, hereinbefore quoted. Under it as amended by said amendment the states or the citizens of any of them *as plaintiffs* may commence and prosecute their claims against foreign states or the citizens or subjects thereof in the courts of the United States. This is because as the United States are responsible for our treatment of foreign states, citizens or subjects, their courts should have jurisdiction over all controversies against them. But if the citizens or subjects of foreign states are the *plaintiffs* and any state is the *defendant* in a controversy, the same cannot be brought in the courts of the United States, but in the courts of such state if it permits itself to be sued.

## CLAUSE 2.

## JURISDICTION OF SUPREME COURT.

In all cases affecting ambassadors, other public ministers and consuls, and those in which the state shall be a party, the supreme court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact; with such exceptions and under such regulations as the Congress shall provide.

Under this clause, in all controversies affecting ambassadors, other public ministers and consuls, and those in which any state shall be a party, the Supreme Court of the United States shall have *original jurisdiction*; that is, such controversies *must be commenced* in the Supreme Court, none of the other United States courts having the power to try the same, nor the courts of any of the states. This is because of the importance of the parties involved, and because the United States is responsible for the treatment of the former and the acts of the latter.

But although these are the only cases over which the United States Supreme Court has *original jurisdiction*, yet it has *appellate jurisdiction* over all other cases that are or can be tried in the other United States courts; that is, the decisions of the United States Circuit and District Courts, or those of the supreme courts of any of the states in matters relating to the laws of the United States, may be *taken* or *appealed* to the United States Supreme Court for the purpose of having it review the same, both as to matter of law and fact, and either affirm the judgment of the lower court or reverse the same and send the controversy back from whence it came to be tried anew. But this appellate jurisdiction of the Supreme Court is subject to the regulation of Congress, and recently, in order to give it relief, it being years behind in its work, Congress created a Circuit Court of Appeals in each of the nine judicial circuits

into which the nation is divided, having final appellate jurisdiction in many cases that could formerly only be appealed to the Supreme Court. Cases involving the constitutionality of the laws of Congress, however, can only be tried on appeal by the Supreme Court.

### CLAUSE 3.

#### TRIAL OF CRIMINAL CASES.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

(In this connection see Amendments V., VI., and VII.)

By virtue of this clause the trial of all crimes committed in violation of the laws of the United States must be by jury; that is, by a body of twelve men, peers of the accused, impartially chosen. It is the province of a jury to decide all questions of fact in a criminal action, and also those of mixed law and fact, the questions of law being left to the decision of the court. No person can be convicted of crime in any United States court unless the jury trying his case unanimously find him guilty of the crime with which he is charged. If they unanimously find him not guilty, he must be released at once and can never be tried on that charge again; but if they disagree a new trial must be had before a new jury. There is one exception to this provision, however, in that impeachment trials cannot be by jury, nor can they be determined in any court of law. This is because an impeachment trial is not, strictly speaking, a criminal trial, but a political proceeding to remove an unworthy civil officer of the United States from office, or to both remove and disqualify him; and hence, as we have hereinbefore seen, should be tried by a political body such as is the Senate.



But the mere fact that an officer has been impeached and removed from office does not bar his being tried in the courts for any crime he has committed, which crime may have been the cause of his impeachment and removal. Trial by jury is considered one of the most important and stalwart pillars of personal liberty.

And as an additional safeguard to the personal liberty of one accused of crime, it is provided by this clause that no person shall be tried at any other place than in the state in which such crime was committed. This leaves the accused among his acquaintances, enables him to obtain witnesses the more readily and very materially lessens his expenses. In conformity with the spirit of this provision there has been at least one United States District Court established in each state, having jurisdiction over all offenses against the Constitution and laws of the nation not punishable by death; where the death penalty may be inflicted the United States Circuit Courts only have jurisdiction. But if a crime is not committed in any state, i. e., in the District of Columbia, on the high seas, etc., Congress has the right to specify where and in what court it shall be tried, which power it has long since exercised. Thus, for instance, in cases of crimes being committed on the high seas, Congress has provided that the same shall be tried in the United States District Court having jurisdiction over the state in which the vessel having the criminal in custody first arrives.

### SECTION 3.

#### TREASON.

#### CLAUSE 1.

#### DEFINITION AND TRIAL OF TREASON.

Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid or comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

As the term is herein used, treason, or, more properly speaking, high treason (in order to distinguish it from that kind of treason resulting from a breach of the allegiance of private and domestic faith, called petit treason), is the most heinous civil crime a man can commit under the laws of any nation. In effect it consists of an attempt to overthrow or subvert a government by the citizens or allies thereof, and therefore merits the severest punishment that can be dealt out by the law. But if high treason was left undefined, the government might declare certain acts to be such and punish their commission as such, which in fact were not and did not merit so severe a punishment. This had taken place frequently in foreign nations, where persons not guilty of treason had been convicted of the same and made to suffer the death penalty, in order that their property might be confiscated or the unholy revenge of some person in authority satiated. Hence, to prevent any such occurrence in this country, the framers of the Constitution determined to define specifically and for all time, through this clause, in just what high treason should consist. This definition, that "Treason against the United States shall consist only in levying war against them, or adhering to their enemies, giving them aid or comfort," is not entirely original, but was patterned in many respects after the English statute of treasons, passed during the reign of Edward III. (25 Edw. III., C. 2).

But under this clause no person can be convicted of treason for merely *conspiring* against the United States, or for agreeing to levy war against them *at a future time*, or for agreeing to adhere to their enemies in case war is *afterwards* declared by giving them aid or comfort. These are treasonable offenses, to be sure, and are punishable in a less degree, but they do not constitute high treason. Before such a crime can be committed there must be an *overt act*;

that is, neither citizens nor allies can commit high treason proper unless they *actually* levy war against the United States or *actually* aid and comfort their enemies. And no person can be convicted of treason, unless he confesses in open court to having committed an overt treasonable act, or unless at least two competent witnesses testify that they saw him commit the *same* overt treasonable act,—not *different* overt treasonable acts. This is so provided because the gravity and the enormity of the offense naturally-prompted the framers of the Constitution to require that no person shall be convicted thereof except upon clear and unmistakable proof of his guilt.

## CLAUSE 2.

### PUNISHMENT OF TREASON.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

We have seen that the last clause *defines* high treason and also prescribes the *kind* and *quantity* of proof necessary to convict one of same, but nothing is said therein as to how one convicted thereof shall be *punished*. Therefore, this clause, which leaves to the judgment of Congress under certain limitations the punishment of treason, was inserted. These limitations are that no attainder of treason shall work corruption of blood or forfeiture of estate except during the life of the person attainted; that is, a conviction of treason under the common law meant that, in addition to the person convicted being compelled to suffer a most horrible death by hanging, drawing and quartering, etc., all property he died seised of, together with his titles and honors, were forfeited and his blood corrupted so that his children could not inherit from or through him. This of course was

a gross injustice to the innocent children of the condemned person, they being compelled to suffer for his sins even into remote generations, and to guard against the occurrence of which in our own fair land this restriction was placed on Congress in this respect. Under it the children of one convicted of treason can inherit from and through him, and his estate cannot be forfeited except during his own life, it reverting to his heirs upon his death.

Congress has availed itself of the power reposed in it under this clause, by declaring that one convicted of high treason "shall suffer death, or, at the discretion of the court, shall be imprisoned at hard labor for not less than five years, and fined not less than ten thousand dollars, \* \* \* with incapacity to hold office under the United States." Thus far no person has ever been convicted of treason against the United States.

Treason may also be committed by one against the state in which he happens to dwell for the time being, as he owes allegiance to it as well as to the United States. The state constitutions and laws in this respect closely follow those of the United States. A notable case was the trial, conviction and execution of John Brown in Virginia, in 1860.

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## ARTICLE IV.

### RELATIONS OF THE STATES.

#### SECTION I.

##### STATE RECORDS.

Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state, and the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.



The public acts, records and judicial proceedings of one sovereign nation are never accepted with full faith and credit by the courts of another sovereign power; that is, they are not given the same faith and credit they receive in the nation in which they originated. And as the states are, so far as their relations with each other are concerned, independent nations, the public acts, records and judicial proceedings of one of them need not have been accepted with full faith and credit by the courts of any of the others had it not been for this provision, the chief objects of which are convenience and the prevention of endless and vexatious litigation, which would doubtless result were the courts of one state in a position to refuse to give full faith and credit to public acts, records and judicial proceedings of the others. But only three classes of documents originating in one state need be given full faith and credit by the courts of the others:

*First, public documents;* that is, the constitutions and statute laws of the states.

*Second, public records;* that is, properly recorded deeds, records of marriages, journals of the legislatures, etc. And,

*Third, judicial proceedings;* that is, judgments, orders and processes of courts of record, and authenticated reports of decisions rendered.

But before these public documents, etc., can be given full faith and credit they must bear proof of their being genuine, else a wide avenue would be left open to fraud. Hence, Congress, by this section, is given the power to prescribe the *manner* of such proof and the *effect* thereof, which power it has long since exercised by providing that public acts of one state shall be given full faith and credit in the others if they are authenticated by the attestation of the state secretary, with the great seal of the state affixed; public records, if they are certified to by the officer whose duty it is to have

charge over them; and judicial proceedings, if they are attested to by the clerk of the court, with the seal thereof affixed, and the certificate of the presiding judge. If public acts, records and judicial proceedings of other states are not thus authenticated or proven, no state need give them full faith and credit.

## SECTION 2.

### RELATIONS OF STATES TO THE INHABITANTS OF OTHER STATES.

#### CLAUSE 1.

##### PRIVILEGES OF CITIZENS OF EACH STATE.

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

The object of this clause is to prevent any state from denying to the citizens of other states who may be within its borders any privileges or immunities that it gives to its own citizens, and the reason for it is that as all these states taken collectively constitute but one nation, and not a confederation of nations, it is plain that the least friction and best business and social results can be obtained by making intercourse between them as free as might be consistent with good government. Because of its provisions, for instance, a citizen of Montana going to New York, or Wisconsin, or any other state for that matter, will be entitled while in such other state to the same privileges and immunities that its own citizens enjoy. But a citizen of one state going into another cannot carry with him any special privileges he might have enjoyed while residing there. Thus, a person who is a voter in one state cannot become one in any other state

to which he may go until he has complied fully with the conditions imposed by the laws of such state. This is because the imposition of such conditions does not in any way infringe upon the privileges guaranteed by this clause, but the same are simply police regulations designed to prevent fraud in voting.

It is recommended that Section 1 of the XIV. Amendment be studied in this connection.

## CLAUSE 2.

### FUGITIVE CRIMINALS.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand to the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

In the olden time if a person wanted for crime in one nation escaped therefrom into another he usually escaped punishment also. But as the lightning express of progress and civilization gradually but surely approached nearer and nearer as the centuries rolled away to the top-most summit of Mount Perfection, it became the custom of all civilized nations to give up the fugitive criminals of their sisters that might be found within their borders, until now such custom is almost universal. This is accomplished by virtue of special treaties entered into for that purpose, called *extradition treaties*. But even where such treaties do not exist between nations, it is their custom as a matter of courtesy to deliver up to each other on demand their fugitives from justice.

And since it is the custom of nations entirely foreign and independent of each other to do thus, with how much more propriety should it be the custom of each of the states to do likewise with the fugitive criminals of the others!

Hence, that this end might be attained the easier and the better the framers of the Constitution inserted this clause.

But the governor of a state on whom requisition is made for a fugitive criminal rarely surrenders him to the governor of the state making the same until he satisfies himself of the merits of the case, and if it has no merits he cannot be compelled to honor such requisition.

### CLAUSE 3.

#### FUGITIVE SLAVES.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

This clause was inserted as another concession to the slave-holding states of the Sunny South, and is regarded by many as one of the primary causes of the Civil War.

As slavery has been abolished this clause is now practically obsolete, except so far as it applies to apprentices and other persons bound out to service for a term of years. Contracts of apprenticeship and servitude, however, are now very rare in the United States, some of them prohibiting the same altogether, and hence what little remaining importance might have attached to this clause after the institution of slavery became a thing of the past has now been all but taken away.

### SECTION 3.

#### NEW STATES AND TERRITORIES.

### CLAUSE 1.

#### ADMISSION OF NEW STATES.

New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states or parts of states, without the consent of the legislatures of the states concerned, as well as the consent of the Congress.



One of the main contentions of the colonies prior to the Revolutionary War and which did much to bring on the same was that all privileges enjoyed by the parent state should also be enjoyed by them, or else they should be made into independent states. This of course was an entirely new doctrine in politics, for it had been during all precedent time the habit and custom of all nations to form any new territory they might acquire by either purchase, discovery or conquest into subject provinces or colonies. Never a thought had they of admitting their dependencies into equal political privileges with themselves, but governed them arbitrarily and with a view of enriching the home industries at their expense. "The largest measure of self-government consistent with their welfare and our duties shall be secured to them," was their motto, but beneath the cloak of these high-sounding words skulked the twin monsters, Greed and Avarice, leaving in their wake little but the horrid skeleton of despair. So after the cloud of battle had cleared away and a new government had been organized on the ruins of the old, it was determined by the fathers that such government should not be allowed to make the mistake in this respect that its seniors in the sisterhood of nations had made, and hence this clause was inserted. The student will note that it provides that new states may from time to time be *admitted* by Congress into the Union; that is, may be taken into the Union at the time and under such conditions as Congress might see fit to impose, but when actually admitted into the Union shall be given the same rights and privileges as are enjoyed by the other states under the guaranty of this Constitution. This bold and radical departure from the old world method of treating new territory has been fraught with the greatest good to humankind, and has been one of the chief means of making our nation truly great.

But the framers of the Constitution were not satisfied with this alone. They feared that through the power reposed in Congress to admit new states into the Union it would be in a position to control the same by threatening to change their boundaries and even their very existence. For that reason they inserted the further provision that no new state shall be formed or erected within the jurisdiction of any other state without the consent of its legislature in addition to the consent of Congress; nor that any state shall be formed by the junction of two or more states or parts of states without the consent of the legislatures of all of the states affected, as well as that of Congress. But there is no limit to the power of Congress to form states from the territory under the jurisdiction of the United States, and outside of the boundaries of any state. This was permitted because the reason for prohibiting Congress from forming new states, etc., out of states already established without the consent of their legislatures is here absent.

Under this clause several states have been formed out of states or parts of states previously existing, but much the greater number have been formed out of the organized territory of the nation. The method of admitting new states out of territory is not always the same, but the one usually resorted to is as follows: The legislature of a territory sends Congress a memorial asking to be admitted into the Union as a state. Congress then, if it thinks best to admit the same, passes what is called an "enabling act," which gives the people of the territory authority to call a convention through their legislature for the purpose of forming a constitution. This constitution is then submitted to them for their approval or disapproval. If it is approved Congress then passes an act admitting the territory into the Union as a new state. But Congress may

admit such territory into the Union without the people thereof approving the constitution submitted by the territorial convention, though it is the better policy not to do so.

## CLAUSE 2.

### TERRITORIES.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

The object of this clause is to *expressly* repose in Congress the power to *dispose* of and *govern* all territory belonging to the United States, and thus put the matter beyond all controversy. But even had this provision been omitted the government would still have had the power to dispose of and govern its territory, and this for the reason that to do so is an attribute of sovereignty. Had this clause been omitted, however, the *manner* in which territory could be disposed of would have been different, for then the treaty-making power of the government, to-wit, the President with the consent of two-thirds of the Senate, instead of the Congress as at present, would have had the power to do so. But whether this clause had been inserted or not, Congress as the legislative branch of the government would still have had the power to *govern* territory. All laws that Congress might pass for the purpose of either governing or disposing of territories, however, must receive the sanction of the President or be passed over his veto, in the same manner as all other laws.

Congress has but once exercised the power to dispose of territory, and that was in 1846, when it re-ceded to the state of Virginia all that part of the District of Columbia

lying south of the Potomac river. The power to govern territories, however, has been long since exercised by it, and in the following manner: To the *unorganised* territory of the Union and to the District of Columbia Congress acts in the capacity of a state legislature and makes laws for their government directly; but in regard to the *organised* territories it has been the general policy of Congress to allow the people thereof to make their own laws, reserving to itself the right to reverse their acts if it is so minded, and to even go so far as to abolish their government. Then, too, the territorial governor and judges are appointed by the President with the consent of the Senate; so that in such cases Congress is really the governing body, though indirectly.

The student will note that although this clause expressly gives Congress the power to dispose of and govern territory, yet it does not give it the power to *acquire* territory. Why this was left out and the other two inserted is not known, for it would seem that they should all go together. But as the power to acquire territory, like the power to govern and dispose of the same, is an attribute of sovereignty, the hands of the government are not tied in this respect. The only difference is that the treaty-making power of the government now has the right to do so; whereas, if it had been expressly disposed of as were the other two, Congress would have had that right. Thus, for instance, the Louisiana territory was acquired through a treaty entered into with Napoleon Bonaparte by President Jefferson, with the consent of two-thirds of the Senate. Congress as a branch of the government had nothing to do with the matter, except indirectly, and all other territory of the United States, whether acquired by purchase, by annexation, by discovery or by conquest has been made a part of the Union by the same power.



The latter part of this clause, that nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state, was inserted as a concession to North Carolina and Georgia, whose claims to certain territory had not yet been settled. But both of these states afterwards ceded the disputed districts to the national government, and thus the matter was settled without the necessity of a resort to arms.

## SECTION 4.

### FEDERAL GUARANTEES TO THE STATES.

The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

By virtue of this section the United States are pledged to guarantee to the states, and this whether they were a part of the Union at the time of the adoption of this Constitution or have since been admitted thereto, three things:

*First, a republican form of government:* that is, the national government binds itself to protect each of the states from the usurpations of one man or a few men whose intention it might be, and who have it in their power, to change a state government into a monarchy or an aristocracy. Fortunately no such occurrence has ever taken place, but should one at any time arise Congress alone would have the power to over-throw such government, by force if need be, and call upon the people of the state in which the same was usurped to set up one having republican institutions in its place. Instead of a tendency toward a more monarchical or aristocratic form of government, however, the political history of at least most of our states shows a constant and happy trend toward a more democratic one. Whether or not the United States could compel the people of any state to have a republican

form of government even though they desired some other is a question left undecided, but perhaps by inference they could do so. Happily, no need for the exercise of this power, if it really exists, has yet arisen; nor is such an occasion likely to ever arise.

*Second, protection against invasion.* Even had this provision been entirely omitted from the Constitution, yet would it have been the duty of the national government to protect each and all of the states against invasion, and this for the reason that to attain such end was one of the principal objects for bringing the Union into being. Had each of the states felt that it was able to stand alone and defend itself, there would have been little need for their taking the course they did. The old adage, "United we stand, divided we fall," kept constantly ringing in their ears, and hence in order to "provide for the common defense" the national government was formed. The Executive Department is the one whose duty it is to protect the states from invasion. And

*Third, protection against domestic violence;* that is, against local disturbances taking place within a state and in violation of the laws of such state. But for fear that the national government might take every little riot or disturbance as an excuse for interfering with the domestic affairs of the states and thus be in a position to menace the much prized right of home rule, it was further provided that no such interference should take place unless the legislature of the proper state, or the governor thereof, if it is not in session or the danger is too imminent to permit of its being convened, shall apply therefor. There are several instances on record where a state has applied to the general government for protection against domestic violence, but generally this was done only after the state authorities found themselves unable to cope with the difficulty. But this protection must be withdrawn immediately after such domestic violence is suppressed. The

Executive Department is also the one whose duty it is to protect the states from domestic violence.

It will be seen that no provision is made in this section, and indeed anywhere in the Constitution, in case any state has two or more rival state governments, each claiming to be the one legally chosen, and any or all of them appealing to the national government for protection against the others. What course should be pursued in that event is a very delicate question, indeed; but the only correct answer would be, perhaps, that in case domestic violence is not resorted to the general government should take no heed of such appeals, but let the duly constituted state courts determine which set of officers is legally chosen. If domestic violence is resorted to, however, then it should obey the call of all the rival governments appealing to it, whether legal or not, suppress the disturbance and finally install the government in power which the state courts decide is the legal one. Other courses have been advocated by constitutional writers and commentators; but it seems to us that this is the only one at all compatible with our institutions, and we believe that should at any time the question come up for final solution the course herein advocated would be determined upon as the legal one.

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## ARTICLE V.

### AMENDMENTS TO THE CONSTITUTION.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as a part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that, no amendment, which may be made prior to the year one thousand eight hundred and eight, shall, in any manner, affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

[Art. 5]

Realizing that change is the inexorable law of nature, and that in time the laws which in their days were best might in the hereafter become useless or worse than useless, the fathers with their customary foresight inserted this article in order that the government they were founding, and which they fondly hoped and believed would live on as a beacon light of hope to all the world till time should be no more, might not be crippled in its youth or in its age. In order to permit the utmost possible latitude in amending this Constitution, two methods of *proposing* amendments are herein submitted. The first of these is that if in the opinion of Congress the Constitution needs altering they may by a two-thirds vote of each House *propose* the necessary amendment. This is done by Congress alone, the approval of the President not being necessary thereto. The second is, that the legislatures of two-thirds of the states may petition Congress to call a Constitutional Convention, in which event Congress *must* do so. The convention thus called may also *propose* amendments to the Constitution. The reason for inserting this alternative method was to provide against the possibility of Congress refusing, either conditionally or otherwise, to propose some needed amendment.

But whether an amendment is proposed by Congress or by the convention called for that purpose, before it can become valid and have the force and effect of law, it must be ratified by the legislatures (or by the conventions) of not less than three-fourths of the states; that is, by the legislatures of not less than three-fourths of the states remaining loyal to the Union.

It will be noticed that either of these methods of amending the Constitution is somewhat difficult and complicated, and at best will require not less than one or two years' time. This was purposely made so for the reason that the fundamental and highest law of the land should not be changed except for good cause, and then only after careful and weighty consideration.



But there are two restrictions on the power to amend the Constitution, the latter of which is still of much importance. The first of these is that no amendment shall be made prior to 1808 which shall affect the first and fourth clauses in the ninth section of the first article. It will be remembered that certain provisions of those clauses were inserted as a concession to the slave states of the South, and, to render them inviolable until the date after which the slave trade might be prohibited, this further provision was inserted in their interests and at their request. The second is that no state, without its consent, shall be deprived by amendment of its equal suffrage in the Senate. This was inserted as an additional concession to the smaller states to appease their fear that, although they were given an equal voice in the Senate with the larger ones, yet that after the adoption of the Constitution the latter might by amendment do away with this equality.

Thus far all propositions of amendments have been made by Congress, and the state legislatures have made all ratifications. To date there have been nineteen amendments proposed, fifteen of which have been ratified or adopted.

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## ARTICLE VI.

### MISCELLANEOUS.

#### CLAUSE 1.

##### PRIOR DEBTS AND ENGAGEMENTS.

All debts contracted and engagements entered into before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

In changing its form of government the United States did not become another nation, nor because of such change did it become released from the obligations it had entered

into under the Confederation. And this would have been the case whether this clause had been included or not, under the provisions of the law of nations. It was inserted, therefore, solely for the purpose of expressly giving notice to the world that the new government intended to keep faith with all nations and to live up to the engagements of the old.

As a matter of course, all debts and engagements *due to* the United States before the change were equally binding after it was made.

## CLAUSE 2.

### SUPREMACY OF THIS CONSTITUTION.

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

It would seem that this clause settles definitely and for all time the question of national supremacy, concerning which so much has been written and said. At least, if it does not, it should do so, for as we are one nation and not a confederation of nations, it would be simply suicidal to permit the states to obey only such parts of the Constitution, laws and treaties of the United States as happened to conform to their fancy. Thus far but one attempt has been made to disobey the supreme law and still remain a part of the Union, and that was by South Carolina in 1832; but President Jackson with his proverbial promptness and decision speedily put a quietus to the same. Hence, we may safely now put it down as settled, and especially since the doctrine of state rights as advocated previous to the Rebellion received such severe treatment at the hands of Grant's red-throated batteries, that the Constitution of the United States, the laws made thereunder and which are

either directly or indirectly authorized thereby, and the existing treaties constitute the supreme law of the nation and must be obeyed by all of the states, their constitutions and laws in conflict therewith notwithstanding, they being compelled to give way thereto.

### CLAUSE 3.

#### OATH OF OFFICE.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

The reason for requiring all members of the national Congress and of the several state legislatures, as well as the executive and judicial officers of both the United States and of the several states to be under oath or affirmation to support the Constitution of the United States is to impose upon them as great a feeling of responsibility as possible. All of the states also require their legislators and executive and judicial officers, to make an oath or affirmation to support their several state constitutions.

In many, if not all foreign countries at the time of the adoption of this Constitution, and in many of the states of this Union, a religious test was imposed as one of the qualifications to hold office. But the fathers, learning from the bitter experience of the ages the undesirability of establishing a state religion or to in any way mingle religion with politics, took a step in advance of the times in which they "lived and moved and had their being," and inserted the provision that no religious test shall be required to render one eligible to hold a public office of honor or trust under the United States. At this time the wisdom of this provision is so apparent that many nations have adopted it either wholly or in part. By virtue of it any person of any religion, whether Christian or otherwise,

or of no religion at all, if he have the other necessary qualifications, may hold office under the United States. Several of the states, however, still impose a slight religious test as one of the qualifications to hold office under them, but happily their number is on the decrease.

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## ARTICLE VII.

### RATIFICATION OF THE CONSTITUTION.

The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

The convention that framed this Constitution was not called for that purpose, but for the purpose of revising the Articles of Confederation. When they met at Philadelphia, however, they soon learned that this would be impossible if the evils existing under the Confederation were to be done away with, so they determined to ignore entirely the old Articles and frame an entirely new form of government. The Continental Congress had provided that the work of the convention should be submitted to it and to the state legislatures for approval and ratification. But the convention, in disregard of the express instructions of the Continental Congress, but in harmony with one of the great fundamental principles of the government they had framed, that the people are the sovereigns, submitted their work for approval or disapproval directly to popular conventions in each of the states. This, however, in order to avoid the appearance of revolution as much as possible, was done in due form, by submitting the same to the Continental Congress coupled with the gentle hint that it be in turn submitted for ratification to a convention in each state called by the legislature thereof, but elected by the people. Congress took the hint thus given and did as per request. In conformity to the wish of Congress all of the states except Rhode Island called conven-

[Art. 7]



tions, it refusing to either do so or to ratify the Constitution in any manner, until compelled to by the national government in 1790, it realizing that to allow an independent state to exist practically within its borders would be extremely dangerous to its own self-preservation.

And in addition to submitting the Constitution for ratification to conventions elected by the people, instead of to the Congress and the state legislatures, the framers of the Constitution took another bold and revolutionary step by declaring that the ratification of the conventions of nine states should be sufficient for the establishment of the same between such states; whereas, the Articles of Confederation required the ratification of all of the states to make any change valid and effective. This was done for the reason that the delegates to the Constitutional Convention well knew that the new form of government they had framed would never be able to go into effect if the ratification of all the states was necessary thereto, as the same would have been defeated by the refusal of Rhode Island, which all along opposed it, and by North Carolina. Hence, this provision, that in the event the Constitution should be ratified by nine or more of the states it was to go into operation only between the states ratifying it, was inserted. After it was submitted to them, nine states ratified it in rapid succession, after which Congress proceeded to make arrangements for putting the new form of government into operation by holding elections for presidential electors and for Senators and Representatives, and setting March 4th, 1789, as the date on which the same should be organized. Before the new government went into effect the Constitution had been ratified by eleven of the original states.

Thus was accomplished a complete revolution in the form of government,—a peaceable revolution to be sure, but nevertheless a revolution. And may it be said to the ever-lasting honor and credit of the American people that it was accomplished in that manner, for the gruesome and blood-stained pages of history may be searched almost in vain to find a precedent therefor.

## AMENDMENTS TO THE CONSTITUTION.

The Constitution as originally framed has now been considered, three amendments, or parts of amendments, only having been commented upon in connection therewith. But although to us who have enjoyed the great privilege of living for a longer or shorter period under the beneficent influence of the government originated by it, it seems to be almost perfect, yet by many of the people of the original states who did not have the benefit of such influence the Constitution was looked upon with honest suspicion and distrust. Consequently, it took the greatest efforts and persuasions of such men as Jefferson, Madison, Hamilton and Jay to bring the ratification of the Constitution about. This was because it was claimed that it did not guarantee sufficiently the rights of the individual. The people had had more experience with the mother country in this respect than they wanted, and it was one of the chief causes of their not tolerating her protection longer. Hence, it is little to be wondered at that they should have looked with suspicious and jealous eyes on the new Constitution, which if ratified by the necessary number of states would confer on the general government much more power than it had under the Confederation, and which to them did not seem to guarantee many or very important rights to the individual. In other words, they feared that the new government would in time become a second England and flagrantly trample in the dust their much-loved and dearly-cherished right of personal liberty. For that reason, many of the states ratified the Constitution under protest and with the distinct understanding that as soon as possible after the new government went into operation the Constitution was to be amended in such a manner as to effectually bar the general government from encroaching on the rights of the people. Accordingly, the First Congress proposed twelve amendments to the same, the object of which was to attain this end, two of which

were not ratified by the requisite number of states. These ten amendments collectively were called the "Bill of Rights." They were patterned to a great extent after the famous *Magna Charta* which was wrung by the people from the reluctant hands of King John, and are the first ten that we shall hereafter consider.

Seven other amendments have since from time to time, as necessity seemed to demand, been proposed by the Congress, five of which were properly ratified. These will, after the Bill of Rights, be given due consideration in the order of their ratification, together with the reasons that called them into existence.

All proposed amendments to the Constitution which are ratified by at least three-fourths of the states have the same force and effect as the provisions of the original document remaining unchanged or unrepealed.

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## ARTICLE I.

### (FIRST AMENDMENT.)

#### FREEDOM OF RELIGION, OF SPEECH AND OF ASSEMBLY.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

It will be remembered that the chief incentive to the early settlers for coming to America's wild and untilled, though fertile, shores was to escape the religious persecutions of their home countries and be in a position to worship the Creator "according to the dictates of their own conscience." Hence, it is not at all to be wondered at that their descendants should cling to the great principle of religious freedom

[Amend. I]

for the attainment of which their forefathers suffered and endured so much ; for of all oppressions, history has taught that a religious oppression is the most bigoted, the narrowest-minded, the most cruel, the most unjust and the most ungodly. But because the first provision of the First Article or Amendment provides that there shall be no state religion and that no laws shall be passed regulating any or all religions, it does not necessarily follow that the United States is not a Christian nation. It simply means that the people thereof may entertain any religious belief that best suits their fancies or temperaments, whether Christian or heathen, or no religion at all, as long as they do not interfere with or trample on the legal rights of others. Nor does it mean that the government itself is not Christian, for as a matter of fact it is Christian to the extent that its people are. And as they are mostly of that faith, the United States as a nation is recognized by all as one of the greatest, if not the greatest, Christian nation in the world.

The second provision of this article, that Congress shall make no law in any manner abridging the freedom of speech or of the press, is one of the most important clauses of the Constitution, for the reason that it is the most stalwart guardian of personal liberty. It will be noticed that in all countries where the rights of the people are but a little or not at all respected the exercise of this right against the government is made a high crime. This is because only by secrecy and by deceit can tyranny flourish. In the open light of day and under the scrutiny of all eyes it cannot succeed, for tyranny loves only the dark and hidden paths. Hence, by giving to all the people the freedom of speech and of the press a premium so high was placed upon its head that it can scarcely find a hiding place within all this broad domain that will not be quickly exposed and razed to the level of the ground. But the right of liberty



given by this provision to speak or write what we like does not mean that we are given the license to say or publish what may chance to come into our minds about anybody or anything, and not be compelled to suffer the consequences if we have injured others. It means simply this, that every person has a right to speak or publish anything he or she likes, but if any one suffers an injury therefrom such speaker or publisher must be responsible therefor in damages to the injured party, and, in addition, in extreme cases, criminally to the state. This is simply placing a proper restraint upon a beneficent right, which if removed would render it worse than worthless. "Liberty unbridled by wise and good laws is license."

The third and last provision, that the right of the people peaceably to assemble, and to petition the government for a redress of grievances, shall not be tampered with by Congress, is also extremely important, though it would seem to be unnecessary under a republican form of government, such as was organized by or under the Constitution. The only end attained by its insertion is to "make assurance doubly sure," by putting the matter beyond controversy. But all public meetings and assemblies, whether political, religious or otherwise, must be held in such a manner as not to disturb or encroach upon the rights of others.

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## ARTICLE II.

### (SECOND AMENDMENT.)

#### THE RIGHT TO BEAR ARMS.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be abridged,

The framers of the Constitution well knew that the most dangerous foe a free government can have is a large

[Amend. II]

standing army, for history has demonstrated too often that in the hands of an ambitious and unscrupulous leader it may become the willing and almost irresistible instrument of tyranny and oppression. But they also knew that even a republic cannot long survive unless the people thereof are in a position to defend their liberties from both foreign and domestic foes. So they inserted the provision that, "A well regulated militia being necessary to a free state, the right of the people to keep and bear arms shall not be abridged." The effect of this is to encourage every citizen to constantly be on familiar terms with the use of arms, by guaranteeing him the right to always keep them at hand, and to encourage him to join the militia organized by the several states in order that should there be any necessity for bearing arms against the common enemy, he would be in a position to do so the more efficiently. It was in the citizen-soldiery that the fathers saw the hope of America, and not in the gilded cohorts of the regular army. And in this they were right, for by giving the people the right to keep and bear arms they have made the untrained citizen soldiers of this nation the handiest and best marksmen in the world, and consequently the best soldiers. (See Clause 15, Section 8, Article I.)

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## ARTICLE III.

(THIRD AMENDMENT.)

### QUARTERING SOLDIERS.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

To "quarter" soldiers in any house means to give them food and lodging. Prior to the Revolutionary War the

[Amend. III]

English were in the habit of quartering their soldiers on the colonists, and especially on those against whom the government bore suspicions or ill-will. This of course was looked upon as a flagrant setting aside of the sacred doctrine that "every man's house is his castle," in the enjoyment of which he should not be disturbed without his consent, and was one of the principal grievances of the colonies against the mother country. Hence, after they had won their freedom and established a government of their own, it was but natural that they should provide therein that no soldiers shall be quartered on them in time of peace without their consent, which it is needless to say is seldom granted.

But in time of war soldiers must move about rapidly, and often cannot carry sufficient food and sheltering with them, especially in winter. Hence, in order that the arms of the government might be facilitated in times so momentous to the people of the nation, the single exception that Congress may then, under proper regulations, quarter soldiers on the people was inserted.

The "owner" mentioned in this article, whose consent must first be obtained before soldiers can be quartered on his premises, means the person in possession thereof, whether he owns the same or not.

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## ARTICLE IV.

### (FOURTH AMENDMENT.)

#### UNWARRANTABLE SEARCHES AND SEIZURES.

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

[Amend. IV]

The effect of this Article is to forbid the seizure of property, the arrest of persons or the search of buildings without legal authority, which authority is called a warrant. A warrant can only be issued after an oath or affirmation has been made by the party applying therefor, containing a statement of certain facts required by law, and then only by an officer duly authorized to issue same. The warrant must also describe the person to be arrested, the property to be seized or the place to be searched, as the case may be. If a warrant is not regular on its face, the officer serving it will be held liable in damages for any injury that may be occasioned thereby.

The reason for this article is the same as that for the last preceding one. It also recognizes the maxim that "every man's house is his castle."

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## ARTICLE V.

### (FIFTH AMENDMENT.)

#### SECURITY TO LIFE, LIBERTY AND PROPERTY.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war and public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

One of the chief objects of both this and the next succeeding Article is to secure to persons accused of crime every possible opportunity to prove their innocence, either before or during trial. The right to be secure from unjust

[Amend. V]



prosecutions, which often become persecutions, is very much cherished by the American people, and is one of the most substantial foundation stones on which their stately edifice of personal liberty is builded. It is their maxim that "It were better for nine guilty persons to escape their just punishment than that one innocent party should be unjustly punished." Therefore, that such end might be attained, this Article among other things provides that no person shall be compelled to stand trial for a capital or other infamous crime until indicted or presented by a *grand jury*, except in certain cases; that is, shall not be compelled to stand trial for any crime the penalty for the commission of which is death or imprisonment in a state or national penitentiary, the committer of which has not had a presentment or indictment entered against him by twenty-four men impartially chosen for the purpose of inquiring into criminal charges against divers persons within a certain district. A *presentment* is a criminal charge in writing preferred against a person on motion of the grand jury itself; an *indictment* is a criminal charge in writing preferred against a person by a grand jury upon the complaint of some other person. But no presentment or indictment must be entered against a party unless there is sufficient cause, based upon probable evidence of guilt, to warrant his being called upon to answer before a petit jury. A *petit jury* is a common jury of twelve men, the duty of which is to pass finally upon the truth of the fact in dispute. Then, too, the grand jury serves to protect persons from being compelled to suffer the trouble and expense of trial upon groundless accusations, and constitutes a bar to vindictive prosecutions by the government or by political or private enemies. But the requirement that a person can be tried for crime only after a presentment or indictment of a grand jury has been entered against him applies only to offenses committed

against the United States. Offenses committed against a state can be tried and punished in any manner such state sees fit to prescribe.

The exceptions heretofore hinted at to this right of those accused of crime to have certain things done before they can be tried are in the cases of persons in the regular army or navy, or in the militia in time of war or public danger. This is because the efficiency of an army or navy lies almost entirely in a prompt and exact obedience to orders, and hence a more summary method of bringing supposed offenders to trial must be had. As we have heretofore seen (Article I., Section 8, Clause 14), offenses committed by soldiers and sailors against the army and navy regulations are punishable by court-martial. But soldiers and sailors may also be tried by the ordinary courts, and in the ordinary manner, for any crime committed by them. Still another exception is that during actual war or insurrection, in the district where martial law may be proclaimed and the writ of *habeas corpus* suspended, citizens as well as soldiers may be tried and punished by court-martial. (Article I., Section 9, Clause 2).

Nor can any person charged with committing a crime against the United States be tried twice for the same offense; that is, if a jury has declared a person "guilty" or "not guilty" of a certain offense he cannot be tried again on the same charge. But if a jury disagrees he has not been put in jeopardy within the meaning of the word as contained in this Article, and may be tried before a new jury. Neither, in case a jury finds one "guilty," and upon appeal to a higher court the verdict and judgment below was reversed, is the party put in jeopardy, and hence he may also be tried by a new jury. The reason for this provision is to prevent a person from being punished twice for the same offense.

Neither can one accused of crime be compelled to give evidence *against* himself, though he may if he wishes. But he can testify *for* himself if he so desires, though this is also not compulsory. If he chooses to testify neither for nor against himself that fact cannot be taken into consideration to his prejudice by the jury, nor can it be commented upon in the argument of counsel.

Nor can the United States government deprive any person of life, liberty or property without due process of law. By "due process of law" is meant a regular trial before some court of law, or under certain circumstances before a court-martial. This was inserted as an additional guaranty to personal liberty, and as a death blow, so far as this country is concerned, to the doctrine held by some that a ruler should have absolute control over the lives, liberty and property of his people. The same is forbidden to the states by the Fourteenth Amendment.

And, lastly, no private property can be taken for the use of the government unless the owner thereof has been paid its full value. It often happens that private property is taken for governmental purposes. Thus, if it is necessary to build a public road the government can take as much private property for that purpose as is needed, and this whether the owner thereof consents thereto or not. This is done under what is called the "right of eminent domain," which is an attribute of sovereignty. If governments did not have this right, it would be almost impossible to undertake any great public work. But before private property can be taken for public use, the owner thereof must receive a just compensation therefor. What this compensation shall be is determined in two ways: First, by agreement entered into between the government and the owner; and, second, if they cannot come to an agreement between themselves, the property is "condemned" under due process of

law, and the value of the same is determined by a jury chosen for that purpose. Even in time of war it is the policy of the government to recompense loyal citizens for all property belonging to them which was seized by its army, but no compensation is ever made to rebels or foreign enemies whose property has been taken in such manner.

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## ARTICLE VI.

### (SIXTH AMENDMENT.)

#### TRIAL RIGHTS OF PERSONS ACCUSED OF CRIME.

In all criminal prosecutions the accused shall enjoy the right of a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

One of the most difficult tasks imaginable is the prescribing by an outraged and offended power of certain rules guaranteeing a fair and impartial trial to its offenders, yet in this respect the United States have succeeded perhaps better than they knew, although they were aware of the fact that as the standard of excellence of the criminal laws of a nation or state rises higher and higher in the scale of civilization the liberty of the citizen becomes to that extent more secure. Never before in the history of the world was there such an excellent code of criminal laws adopted as are provided for by this Article. Up to that time the criminal codes of all nations were more favorable to the offended government than to the accused, because it was thought that the safety of the government required

[Amend. VI]



such a course, but the people of the United States, being themselves the sovereigns, thought differently, and therein they showed their true fitness for self-government and won for themselves a tribute of never-ending praise.

First among the rights guaranteed to one accused of crime is that he shall enjoy a *speedy* and *public* trial. This was inserted as a safeguard to one who is unable to obtain bail from being detained in jail upon a criminal charge for an unreasonable time, and to secure a fair and impartial trial. By virtue of it such person must be tried as soon as possible after the date of his arrest, which is usually at the next term of court, unless for some good reason a delay is granted to the accused upon his application therefor. The provision that the accused shall have a public trial, in addition to meaning that spectators shall be allowed to witness the proceedings of the trial itself, except in cases where the morals of the community might be injured, also means that the public shall have access to the records of the court, and that the press may publish accounts of such proceedings.

And besides being speedy and public, the accused is also entitled to trial by a *jury* impartially chosen from the state or district in which the crime is alleged to have been committed. And this district or state cannot be created for the express purpose of trying some one arrested for crime, but must have been organized prior to the date on which the same was committed. The object of all this is to put the accused to as little trouble and expense as possible, and to secure to him an impartial trial among his acquaintances, as well as to guarantee to him freedom to a great extent from the effects of a hostile and partial public sentiment. Trial by an impartial jury is considered one of the greatest bulwarks of personal liberty.

The accused must also be informed of the nature of the charge preferred against him, in order that he may be in

a position to prepare his defense. This is done by delivering to him a true and exact copy of the presentment or indictment, or upon demand, by showing him the original warrant or a certified copy thereof, or both.

In order that the accused may be in a position to hear the testimony of all witnesses called against him, and thus be the better prepared to cross-examine them, either in person or by counsel, this Article gives him the important right to confront and cross-examine all witnesses against him. In this manner only is the real truth likely to be brought out. For the same reason the prosecution is given the right to cross-examine the witnesses of the accused.

As the government impliedly had the right to issue processes compelling arbitrarily the attendance of witnesses to testify in its behalf in criminal actions, justice and impartiality also dictated that the accused be given the same right, and hence the provision to that effect in this Article. Had it not been thus, it would have been impossible in almost every case for the accused to produce evidence in his behalf, and therefore the great object of securing to him an impartial trial would have been defeated. The process used for arbitrarily compelling the attendance of witnesses, both for the state and for the defense, is called a *subpoena*.

And, lastly, the accused shall have the right to be assisted in his defense by counsel, though if he wishes he may defend himself personally. The reason for this provision is that because of the technicalities and peculiar practices of the law no layman could hope to secure an impartial trial without the assistance of one learned therein and familiar therewith. So important, indeed, is this right thought to be that if the accused is too poor to hire his own attorney, the court will appoint one to act for him, the fees of such attorney being paid by the government.

And in addition to the guaranties given the accused by this Article, that grand old English inheritance of ours, the *lex non scripta* (unwritten or common law), has wrapped her protecting folds about him and declared that every such person shall be presumed innocent until proven guilty, and that the burden of proving him guilty lies upon the prosecution; that sufficient time must be given the accused to prepare his defense; that the charges in the indictment or presentment preferred against him, must be definite and easily comprehended; that no hearsay evidence must be admitted, either for or against him, on direct examination; that the verdict of the jury must be either "guilty" or "not guilty"; that the verdict must be "not guilty," unless the jury is satisfied beyond a reasonable doubt from the evidence that he committed the crime with which he is charged.

It will be readily seen from the foregoing that almost every guaranty consistent with the spirit of justice, good government and common sense has been given by the government to its alleged offenders, and that the personal liberty of the people in this respect has been well secured.

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## ARTICLE VII.

### (SEVENTH AMENDMENT.)

#### TRIAL BY JURY IN SUITS AT COMMON LAW.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

We have seen that the next preceding Article of the Bill of Rights guaranteed a trial by jury in criminal cases. The

[Amend. VII]

object of this Article is to guarantee a similar trial in all common law cases where the amount in controversy exceeds the sum of twenty dollars. *Common law cases* are all cases of a civil nature, except those arising under the admiralty and maritime law and under the rules of equity. There is this difference, however, between the guaranties of this Article and of the last in regard to trial by jury, that all criminal cases *must* be thus tried, while all civil cases *need not* be, but may be tried by the court sitting without a jury, if the parties interested agree thereto and the consent of the judge in certain cases is first obtained.

But for fear that the Supreme Court of the United States, which is given by Article III., Section 2, Clause 3, appellate jurisdiction both as to matters of law and fact, might construe this to mean that it could rehear all matters of fact tried by a jury in civil cases in the lower courts, the further provision that no fact tried by a jury in common law cases "shall be otherwise re-examined in any court of the United States than according to the rules of the common law," was inserted. These rules, so far as they apply to this provision, are that in common law cases the questions of fact must be tried by a jury unless the same is properly dispensed with, and the questions of law by the court; and that if after such case has been tried by the court and jury, and the judgment and verdict has been reversed or set aside on appeal by a higher court, then a new trial must be had in the same court that originally tried the case, and before a new jury. The reason for this provision was to interpose the barrier of a jury trial to oppression by the government. Had it not been inserted, the object for the attainment of which jury trials were provided might have been defeated, as there is no jury in the Supreme Court in appealed cases.

[Amend. VII]



## ARTICLE VIII.

## (EIGHTH AMENDMENT.)

## EXCESSIVE BAIL, FINES AND PUNISHMENTS FORBIDDEN.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

*Bail* is the security given by a certain number of freeholders that the person accused of crime will appear and stand trial at the proper time and place, in consideration of his being released from the custody of the officers of the law in the interim. A *fine* is a sum of money imposed by a court as a punishment for some penal offense. The meaning of *cruel and inhuman punishment* as herein used is somewhat indefinite, though it perhaps refers to such punishments as ducking, whipping, burning at the stake, torturing on the rack, drawing and quartering, etc.

It will be readily understood why excessive bail and fines and cruel and inhuman punishment were forbidden when we consider that they were but a few of the grievances against which our forefathers rebelled.

## ARTICLE IX.

## (NINTH AMENDMENT.)

## PERSONAL RIGHTS NOT TO BE CONSTRUED STRICTLY.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

We have already seen that the people *expressly* reserved to themselves certain rights, but it was found both impracticable and impossible to enumerate all of them. Hence,

[Amends. VIII—IX]

in order to remove the fear that the government might attempt to trample on all those not mentioned in the Constitution or Amendments this Article was inserted.

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## ARTICLE X.

### (TENTH AMENDMENT.)

#### POWERS RESERVED BY THE PEOPLE.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

We have seen that the theory on which the structural work of our national government was reared is that the people are the sovereigns and that from them emanates all authority, all law. When these people for their own protection and advancement concluded to form a national government, it was their intention that such government should be one of *limited* powers; that is, one having only such powers as were expressly given to it by the Constitution, and such other powers as could be implied from these. In other words, it was the intention of our forefathers to bestow upon the national government they had formed no power *ex proprio vigore*, and this for the reason that had they intended otherwise they would have given up all their sovereignty to the general government, which of course could not be tolerated after their bitter experience with the sovereign power of England. They were determined that no central government strong because of its having unlimited power should rule over them. Instead, their every thought and intention was to *limit and decentralize* the power of such government. Although at the time their intentions and wishes in this respect were

very well and clearly known and understood, yet they were not satisfied, for they feared that as the years slowly but surely rolled away into "eternity's shoreless sea" this intention of theirs would be forgotten or disregarded and the Constitution be construed as giving to the government of the United States unlimited power; and thus destroy in the fleeting of a breath the great structural work that had cost them so much blood and treasure to build. Hence, in order that this should not be, they *expressly* declared by means of this Article that all powers are reserved to the people or to the states (which means practically the same thing), except those which are delegated to the United States by this Constitution or forbidden by it to the states. The result of this is that the Supreme Court cannot under any circumstances now construe the Constitution to mean that the government organized under it has any other powers than those expressly granted it therein, and such others as may be fairly implied from the same; also, to prevent the state supreme courts from construing as valid such laws as are not forbidden by the respective state constitutions but are in violation of that of the United States. This latter end would have been likewise attained if the state constitutions had forbidden their legislatures to pass such laws as they are forbidden to pass by the United States Constitution, for the state governments, unlike that of the United States, have power *ex proprio vigore*, they being in effect the people. But lest certain powers extremely liable to abuse might not be prohibited by the constitutions of some of the states, or that their lack of uniformity might result in evil, it was thought best to prohibit the same to the states through the United States Constitution.

[Amend. X]

## ARTICLE XI.

## (ELEVENTH AMENDMENT.)

PROHIBITION ON STATES BEING SUED IN UNITED STATES  
COURTS.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

At the close of the War of the Revolution both the United States and the states were heavily burdened with debts incurred during the progress of that struggle, and for the purpose of aiding in the carrying on of same. The United States, of course, in order to secure to itself the honor, respect and confidence of the nations of the world, and to comply with the requirements of international law, undertook the full satisfaction of its debt. But most of the states were not in a position to pay their debts on demand, and some of them were so deeply involved that they could never discharge the same. So, in order that they might not be compelled to pay their debts, except when they desired to do so, or if they wished, to repudiate the same altogether, this Amendment, which is a result of a decision of the United States Supreme Court that under Article III., section 2 of the Constitution, the United States courts could compel the states to pay all debts owed by them to citizens of other states, was inserted. Its effect is to free the states from all fear of the national government compelling them to pay their debts before they are ready or in a position to do so, or from compelling them to pay such debts as they desire to repudiate. In other words, it has the same effect in respect to the states as a bankruptcy law has in respect to individuals. Most of the states, however, in their own good time have paid their

[Amend. XI]



debts in full, but some of them have repudiated a part thereof.

Since this Amendment was adopted the only way to compel a state to pay a debt is through its own courts, if it has consented expressly to permit itself to be sued, and even then there must be an appropriation for that purpose by the legislature of such state before it can be satisfied. The usual method for all the states to settle their obligations, however, is by legislative appropriation without suit.

Although this provision does not permit the states to be sued in the courts of the United States, yet such parts of them as counties, cities, townships, etc., may be and often are sued in the national courts by citizens of other states.

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## ARTICLE XII.

(TWELFTH AMENDMENT.)

### ELECTION OF PRESIDENT.

It will be remembered that this Amendment was adopted as a substitute for the original Clause 3, Section 1, Article II., in the place and order of which it was fully discussed, so it is unnecessary at this time to either give or treat the same. We will only add that this Amendment was ratified in 1804, and was adopted to the Constitution as a precautionary measure against the occurrence of the dangers that might grow out of circumstances similar to those which surrounded the disputed election of 1801.

[Amend. XII]

## ARTICLE XIII.

## (THIRTEENTH AMENDMENT.)

## ABOLITION OF SLAVERY.

Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Congress shall have power to enforce this article by appropriate legislation.

This Amendment and the two next succeeding ones were one of the first fruits of the Civil War, and were designed, in the order in which they come, to abolish slavery, to bestow upon the liberated slaves full citizenship, and to give them the privilege of voting.

As the Constitution now stands slavery in the United States, and in all forts, arsenals, dockyards, territories, etc., subject to their jurisdiction, is absolutely forbidden; and cannot be legalized either by act of Congress or by treaty entered into for that purpose.

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ARTICLE XIV.

## (FOURTEENTH AMENDMENT.)

## MISCELLANEOUS PROVISIONS RELATING TO RECONSTRUCTION

## SECTION 1.

## CITIZENSHIP AND THE PRIVILEGES INCIDENT THERETO.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state in which they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

[Amends. XIII—XIV]

One of the objects of this section is to define specifically who are and who are not citizens of the United States. Previous to its adoption there had been much doubt on that point. Of course, prior to such event slaves were not citizens of the United States, but as to the exact political status of free negroes there was much dispute. At this time there can be no doubt as to who are and who are not citizens of the United States, for all persons, whether white, black or any other color, born within the jurisdiction of the same, except Indians not taxed, are citizens thereof, as are all persons born without the United States but who have become citizens of the same by naturalization. But no Chinaman, as the law now stands, can become a citizen of the United States by naturalization, though he may by birth. The fact that one is not a citizen of the United States, however, does not bar him from becoming a citizen of any of the states. Thus, we have seen that if a person is a resident of a state for a certain length of time he may be a voter of such state, and hence a citizen thereof, though he is not a citizen of the United States. But a person cannot become a citizen of more than one state at the same time, and this because to be a citizen of a state one must be a resident thereof.

Another object was to place a limitation on the power of the states by providing that the privileges of citizens of the United States shall not be abridged by any of the states, and that no state shall deprive any person, regardless of his color or previous condition of servitude, of life, liberty or property without due process of law. This limitation was designed primarily as a barrier to prevent the Southern states from denying to their emancipated slaves any rights which a white citizen of the United States might enjoy under the laws thereof; and also to prevent them from denying to such persons the equal protection of life, liberty and property under the laws of the several states as may be enjoyed by the white citizens of the same. This is in accordance with the principle set forth in the Decla-

ration of Independence, "that all men are created equal," etc., which previous to the issuing of the emancipation proclamation had been construed to apply to all classes of persons except slaves. But it will be noticed that this provision is in its nature general, the word "slave" or any other word of limitation not being used therein, and hence as it now stands the United States can protect any and all persons residing within a state against the oppression thereof. Except in the case of the slaves this power has never been exercised, nor has there been any need that it should be.

## SECTION 2.

### APPORTIONMENT OF REPRESENTATIVES.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President or Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Every ten years the Congress of the United States apportions out to the several states the number of members each shall have in the national House of Representatives during the ten years succeeding. Under Section 2, Article I., of the Constitution as originally framed, the basis for determining this number was to count all persons residing within the United States, except Indians not taxed and three-fifths of all slaves, and each state was given the number of Representatives in proportion to which its population thus enumerated bore to the population of the nation counted in a like manner. But after the abolition of slavery, it became apparent that some inducement had

[Amend. XIV]



ought to be held out to the Southern states to give the liberated negroes the equal privilege to vote with the white citizens, for it must be remembered that each state has the right to determine who shall and who shall not be entitled to the privilege of voting within its borders. Hence, this section, which changes the basis of representation from that mentioned above to the whole population of the nation, excluding only Indians not taxed, thereby increasing the representation of the Southern states in Congress if they accepted the inducement offered, was inserted. But it will be noticed that this section does not *compel* them to give to the blacks the equal privilege of voting with the whites, however much of an inducement it may hold out to them to do so. This object, however, is accomplished by the Fifteenth Amendment, where it will be given due attention.

### SECTION 3.

#### DISABILITIES OF REBELS.

No person shall be a Senator or Representative in Congress, or elector, or President, or Vice President, or hold any office civil or military, under the United States, or under any state, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof; but Congress may, by a vote of two-thirds of each House, remove such disability.

Under section 3, Article III., nearly every white male capable of bearing arms in the Confederate states, and many of the females, were traitors to the United States, and liable to be punished as such. But the national government, being "heir to all the ages and foremost in the files of time," did not choose to inflict so severe a punishment on those who had been at one time a part of her very being, so to speak—not even on the prime instigators and

[Amend. XIV]

leaders of the Rebellion. Besides, the United States thought that if they returned good for evil and charitably forgave their rebellious members the work of reconstruction would be with much less difficulty accomplished. But they also thought that some sort of a mild reproof had ought to be administered to the seceded states, in order that they might not make the mistake that they were conferring a favor upon the United States by returning again to the fold. Hence, this section, the primary object of which was to prevent all state or national officers, whether legislative, executive or judicial, who had previously taken an oath to support the Constitution of the United States but who afterwards broke the same by participating in the Rebellion, from holding any office whatever under the United States or any of the states unless Congress by a two-thirds majority of each House saw fit to forgive these also, was included in this Amendment.

But although the above provision was meant primarily to apply only to those who broke their oaths of office to support the Constitution of the United States during the War of the Rebellion, yet the student will note that it is general in character, and therefore stands as a warning to all those in a like situation not to engage in any future rebellion against the supreme constituted authority. This provision, however, does not prevent Congress from inflicting a much heavier punishment on a rebellious people if it so desires.

It will also be noted that the President's power to pardon is somewhat limited by this section, as Congress only has the power to pardon the class of traitors enumerated therein to the extent that they may hold office under the United States or any of them.

The disabilities of all but a few of those directly referred to in the above have from time to time been removed by Congress.

## SECTION 4.

## STATUS OF THE PUBLIC DEBT AND OF THE REBEL DEBT

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume to pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Very little explanation is needed of this section. It means simply what it says: that all debts incurred by the national government, in suppressing the Rebellion in whatever manner, shall be paid by it in due season; and that neither the United States nor any state shall pay the debts incurred in aid of the Rebellion, or pay any claim arising out of the loss or emancipation of any slave.

This section, however, so far as any practical benefit being derived therefrom, is *nil*; for the national government in any event would have had to pay its debt if it wished to keep up its credit and retain the respect and confidence of the nations of the world; while who ever heard of a conquering power paying the obligations of the vanquished? Hence, the only possible end attained by its insertion was to make "assurance doubly sure."

## SECTION 5.

## POWER OF CONGRESS TO ENFORCE THIS ARTICLE.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Congress has long since carried the provisions of this Article into effect by appropriate legislation. But the insertion of this section was unnecessary, as Congress in any event would have had such power.

[Amend. XIV]

## ARTICLE XV.

## (FIFTEENTH AMENDMENT.)

## EQUAL SUFFRAGE.

The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude.

Congress shall have power to enforce this article by appropriate legislation.

For fear that the inducements held out to the Southern states by section 2 of the next preceding Article to permit the blacks to exercise the privilege of suffrage upon the same footing as the whites might not prove sufficient to attain that end, this Article was proposed and adopted.

Its effect is to prohibit the states, whom we have seen have the right to prescribe the qualifications for voting of all persons residing within their respective borders, from in any manner discriminating against the negroes, or for that matter against any other race, in respect to suffrage. But it does not prevent a state from at any time increasing or diminishing the qualifications required before it will permit any of its citizens or residents to exercise the privilege of suffrage. Thus, a state may provide that its residents otherwise qualified shall have a certain amount of property before they can vote; or that they must have a more or less stringent educational qualification; or that they shall have a greater or less age than twenty-one. A state can even permit its female residents having the other qualifications in common with the males to vote. And it may prescribe that insane persons, idiots and felons, though otherwise qualified, shall not be permitted to vote. But if by prescribing an educational, property or other qualification a state should deprive some of its male citizens over the age of twenty-one from voting, its represen-

[Amend. XV]



tation in Congress would to that extent be diminished, as is provided in section 2 of the last Article. This would not be the case, however, if the privilege to vote was denied to women or to males under the age of twenty-one.

Thus, by these last three Amendments was the last great blot on the fair name of liberty removed—in theory at least—and our national government raised to be the brightest beacon light of hope to future ages as they come.

[Amend. XV]

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## APPENDIX.

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# THE DECLARATION OF INDEPENDENCE.

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IN CONGRESS, JULY 4, 1776.

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## THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: that all men are created equal; that they are endowed, by their Creator, with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer while evils are sufferable than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty to throw off such government, and to provide new guards for their future security. Such has been the



patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused for a long time after such dissolutions to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise, the State remaining, in the meantime, exposed to all the dangers of invasion from without and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offenses:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our government:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections among us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind—enemies in war, in peace, friends.

We, therefore, the representatives of the UNITED STATES OF AMERICA, in general congress assembled, appealing to the Supreme

Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, FREE and INDEPENDENT STATES; that they are absolved from all allegiance to the British crown, and all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as FREE and INDEPENDENT STATES, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which INDEPENDENT STATES may of right do. And for the support of this Declaration, with a firm reliance on the protection of DIVINE PROVIDENCE, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

JOHN HANCOCK.

BEECHER'S  
CONSTITUTION  
AND  
CIVIL GOVERNMENT  
of  
MONTANA.



BY  
WM. J. BEECHER, LL. D.  
A MEMBER OF THE MONTANA BAR.

WM. J. BEECHER, PUBLISHER,  
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## PREFACE.

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In introducing this work to the Montana public we shall content ourselves by saying that it has been our constant aim in the preparation of the same to give in as plain and concise language as possible, without repetition, an elucidation upon the fundamental rules relative to the Civil Government of "Our Mountain Home." Further than this we have not gone, nor could we do so without over-stepping the limits of a work of this nature. For that reason, this volume will be found of very little value as a work of reference to the legal profession and others, for it makes no pretension of delving down deep into and unraveling the intricate and knotty problems of the law. Instead, it is designed simply to give the Montana public, and especially her coming men and women, a general and correct idea of how and by what means she is civilly governed. Firmly do we believe that no free people can long retain their liberty and independence, or at least retain them undefiled, unless they are at all times familiar with the institutions of their state and nation, for by being in such a position only can they exercise intelligently and beneficently the privilege of declaring by ballot the freeman's sovereign will. Therefore, if through the agency of this book we shall be of any aid to the people of Montana in this respect, we will feel that our efforts have not been in vain.

W. J. B.

LIVINGSTON, MONTANA, April 15th, 1901.

# CONTENTS.

	PAGE.
Preliminary .....	I
Enacting Clause, or Preamble.....	5
ARTICLE I.—Boundaries .....	7
ARTICLE II.—Military Reservations.....	8
ARTICLE III.—Bill of Rights.....	9
SECTION 1.—Political Power, in Whom Vested.....	10
SECTION 2.—Right of Self-government.....	11
SECTION 3.—Rights of Persons.....	12
SECTION 4.—Religious Freedom.....	13
SECTION 5.—Freedom of Suffrage.....	15
SECTION 6.—Guaranty of a Fair and Impartial Trial...	16
SECTION 7.—Security of Persons and Property.....	17
SECTION 8.—Mode of Prosecuting Criminal Offenses...	19
SECTION 9.—Treason and Attainder.....	22
SECTION 10.—Freedom of Speech.....	23
SECTION 11.—Ex Post Facto Laws, etc.....	25
SECTION 12.—Imprisonment for Debt.....	26
SECTION 13.—Right to Bear Arms.....	27
SECTION 14.—Property Taken Must Be Compensated for.	28
SECTION 15.—Water Rights, etc.....	29
SECTION 16.—Rights of Accused Persons.....	31
SECTION 17.—Imprisonment of Prosecuting Witness....	33
SECTION 18.—Additional Rights of Accused Persons....	34
SECTION 19.—Bailable Offenses.....	35
SECTION 20.—Excessive Bail, etc.....	35
SECTION 21.—Writ of Habeas Corpus.....	36
SECTION 22.—Military Subordination.....	37
SECTION 23.—Right of Jury Trial.....	38
SECTION 24.—Foundation of Criminal Laws.....	40
SECTION 25.—Rights of Aliens, etc.....	40
SECTION 26.—Freedom of Assembly and Petition.....	41
SECTION 27.—Rights of Persons (continued).....	42
SECTION 28.—Slavery .....	43
SECTION 29.—Rule of Construction.....	43

# CONTENTS.

v

	PAGE.
SECTION 30.—Rights Reserved by the People.....	44
SECTION 31.—Suppression of Domestic Violence.....	44
ARTICLE IV.—Distribution of Powers.....	45
ARTICLE V.—Legislative Department.....	45
SECTION 1.—Vestment of Legislative Power.....	45
SECTION 2.—Term of Office of Senators and Repre- sentatives .....	46
SECTION 3.—Qualifications of Assemblymen.....	47
SECTION 4.—Number of Members.....	47
SECTION 5.—Compensation of Members.....	49
SECTION 6.—Sessions of Legislative Assembly.....	50
SECTION 7.—Restrictions on Members.....	51
SECTION 8.—Increase of Salary.....	51
SECTION 9.—Officers and Elections.....	52
SECTION 10.—Quorum .....	53
SECTION 11.—Rules of Legislative Assembly.....	54
SECTION 12.—Records of Proceedings.....	56
SECTION 13.—Publicity of Proceedings.....	57
SECTION 14.—Adjournment .....	58
SECTION 15.—Privileges of Legislators.....	59
SECTION 16.—Power of Impeachment.....	60
SECTION 17.—Who May Be Impeached.....	61
SECTION 18.—Removal of Other Officers.....	62
SECTION 19.—How Laws are Enacted.....	63
SECTION 20.—Style of All Laws.....	64
SECTION 21.—Time of Introducing Bills.....	65
SECTION 22.—Printing of Bills, etc.....	65
SECTION 23.—What Titles of Bills to Contain.....	66
SECTION 24.—Majority Vote.....	67
SECTION 25.—Manner of Amendment.....	67
SECTION 26.—Passage of Special Laws Forbidden.....	68
SECTION 27.—Duties of Presiding Officer.....	69
SECTION 28.—Duties, etc., of Other Officers.....	70
SECTION 29.—Extra Compensation of Officers Not Al- lowed .....	70
SECTION 30.—State Printing, etc.....	71
SECTION 31.—Salaries Cannot Be Increased or Dimin- ished .....	72
SECTION 32.—Where Revenue Bills Originate.....	72
SECTION 33.—Appropriation Bills.....	73



	PAGE.
SECTION 34.—Manner of Paying Public Money.....	74
SECTION 35.—Appropriations to Churches, etc., Forbidden .....	74
SECTION 36.—Delegation of Powers.....	75
SECTION 37.—Investment of Trust Funds.....	75
SECTION 38.—Government Aid to Private Enterprises Forbidden .....	76
SECTION 39.—Extinguishment of Obligations Owing to the State.....	77
SECTION 40.—Concurrent Resolutions.....	78
SECTION 41.—Bribery by Legislators.....	79
SECTION 42.—Bribery by Others.....	80
SECTION 43.—Solicitation of Bribery by Officers and Others .....	80
SECTION 44.—Interest of Members in Proposed Legislation .....	81
SECTION 45.—Vacancies .....	81
ARTICLE VI.—Apportionment and Representation.....	82
SECTION 1.—Representation in Congress.....	82
SECTION 2.—Apportionment of State Representatives...	83
SECTION 3.—Representative Districts.....	84
SECTION 4.—Senatorial Districts.....	85
SECTIONS 5 and 6.—Number and Formation of Districts.	85
ARTICLE VII.—Executive Department.....	86
SECTION 1.—In What Executive Department Consists..	86
SECTION 2.—Mode of Electing Executive Officers.....	89
SECTION 3.—Eligibility of Executive Officers.....	91
SECTION 4.—Salaries of Executive Officers.....	92
SECTION 5.—Executive Power Vested in Governor.....	93
SECTION 6.—Commander-in-Chief, Governor Is.....	94
SECTION 7.—Appointive Power of Governor.....	94
SECTION 8.—State Examiner.....	96
SECTION 9.—Pardoning Power.....	97
SECTION 10.—Duties and Sole Powers of Governor.....	99
SECTION 11.—Power to Call Special Session .....	100
SECTION 12.—How Bills Become Laws.....	101
SECTION 13.—Veto of Appropriation Items.....	103
SECTION 14.—Vacancies in Office of Governor.....	104
SECTION 15.—Duties of Lieutenant Governor.....	105
SECTION 16.—Vacancies in office of both Governor and Lieutenant Governor.....	106

# CONTENTS.

vii

	PAGE.
SECTION 17.—The Great Seal.....	106
SECTION 18.—Grants, etc., How Authenticated.....	107
SECTION 19.—Accounts of Executive Officers.....	108
SECTION 20.—State Board of Examiners, etc.....	108
ARTICLE VIII.—Judicial Department.....	110
SECTION 1.—Judicial Power, In What Vested.....	110
SECTION 2.—Jurisdiction of Supreme Court.....	111
SECTION 3.—Powers of Supreme Court.....	111
SECTION 4.—Terms of Supreme Court.....	115
SECTION 5.—Organization of Supreme Court.....	116
SECTION 6.—Election of Justices.....	117
SECTION 7.—Terms of Justices.....	118
SECTION 8.—Time of Election of Justices.....	118
SECTION 9.—Clerk of Supreme Court.....	119
SECTION 10.—Qualifications of Justices.....	120
SECTION 11.—Jurisdiction of District Courts.....	120
SECTIONS 12 and 13.—Judicial Districts.....	121
SECTION 14.—Number of District Judges.....	122
SECTION 15.—Writs of Error.....	123
SECTION 16.—Qualifications of Judges.....	124
SECTION 17.—Terms of District Courts.....	124
SECTION 18.—Clerks of District Courts.....	125
SECTION 19.—County Attorneys.....	125
SECTION 20.—Justices of the Peace.....	126
SECTION 21.—Jurisdiction of Justices' Courts.....	128
SECTION 22.—Sessions of Justices' Courts.....	129
SECTION 23.—Appeals from Justices' Courts.....	129
SECTION 24.—Police or Municipal Courts.....	130
SECTION 25.—Courts of Record.....	131
SECTION 26.—Uniformity of Law Regulating Courts....	131
SECTION 27.—Title of Processes.....	132
SECTION 28.—Civil Actions.....	132
SECTION 29.—Salaries of Justices and Judges.....	133
SECTION 30.—No Allowance of Additional Fees.....	134
SECTION 31.—Practice Law, Judicial Officers Cannot....	134
SECTION 32.—Decisions Supreme Court, Publication of.	135
SECTION 33.—Residence of Judges and Others.....	135
SECTION 34.—Vacancies .....	136
SECTION 35.—Can Hold but One Office, Judicial Officer.	136
SECTION 36.—Judge Pro Tempore.....	137
SECTION 37.—Absence of Judicial Officers from State...	138

	PAGE.
ARTICLE IX.—Right of Suffrage and Qualifications to Hold Office.....	138
SECTION 1.—Manner of Voting.....	138
SECTION 2.—Qualifications of Voters.....	139
SECTION 3.—Gaining or Losing Residence.....	140
SECTION 4.—Voters Privileged from Arrest.....	141
SECTION 5.—Performance of Military Duty on Election Day .....	142
SECTION 6.—Non-residents .....	142
SECTION 7.—Qualifications for Office.....	142
SECTION 8.—Persons Non Compos Mentis.....	143
SECTION 9.—Registration Laws.....	143
SECTION 10.—Eligibility of Women to Vote, etc.....	144
SECTION 11.—Eligibility for Office.....	144
SECTION 12.—Questions of Taxation.....	146
SECTION 13.—Plurality Elects.....	146
ARTICLE X.—State Institutions and Public Buildings	147
ARTICLE XI.—Education .....	148
ARTICLE XII.—Revenue and Taxation.....	152
ARTICLE XIII.—Public Indebtedness.....	154
ARTICLE XIV.—Military Affairs.....	156
ARTICLE XV.—Private Corporations.....	157
ARTICLE XVI.—Public Corporations and Officers.....	159
ARTICLE XVII.—Public Lands.....	162
ARTICLE XVIII.—Labor .....	163
ARTICLE XIX.—Miscellaneous Subjects and Future Amendments .....	164
SECTION 1.—Oath of Office.....	164
SECTION 2.—Lotteries .....	165
SECTIONS 3 and 4.—Homesteads, Exemptions, etc.....	165
SECTION 5.—Perpetuities Forbidden.....	166
SECTION 6.—Location of County Offices.....	167
SECTION 7.—Disposition of Public Lands.....	167
SECTION 8.—Constitutional Convention.....	168
SECTION 9.—Amendments, How Made.....	171
ARTICLE XX.—Change from Territory to State.....	173

BEECHER'S  
CONSTITUTION AND CIVIL GOVERNMENT  
OF  
MONTANA.

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PRELIMINARY.

In beginning the study of the science of state government three questions naturally present themselves for our consideration. The first of these is, What constitutes a state? The second is, How are states constituted? And the third is, Why are states constituted?

To the first question we must answer that the term state as herein used means one of those political communities of free citizens, existing and occupying a defined territory within and forming a part of the American Union, and organized under a government sanctioned and limited by a written Constitution, which government was established by the consent of the governed. In other words, the primary idea is that the people residing within a certain well-defined local self-governing political body called a state, which state forms a distinct part of that greater political body called the United States, constitute the same. This is the great fundamental principle upon which our institutions are established—that the people constitute the state.



With us the people (meaning a majority of those having the right to vote) are the sovereigns. They are the sources of all authority, all law. They are the promulgators of all new ideas relative to their own self-government, and the destroyers of those grown useless, or worse than useless, under the influence of the ruthless hand of time. They are at once the legislators, the executors and the judges. They are the courts of last resort. From the secret depths of their inmost bosoms well up the hidden sources of the great fount of justice, of order and of law. And so it follows that the people of that broad and rich domain called Montana are the constituters or creators thereof. They were the people who framed the Constitution of Montana, and organized under its proper limitations the state government under which we live. And it is of this Constitution and the government thus organized that we are now about to study.

To the second question we must reply that states (meaning self-governing units of the United States) are constituted in a variety of ways, there being no specific mode of procedure prescribed to attain that end, nor could there be one that would suit all circumstances. For instance, the original thirteen states were born in the blood of revolution, and their baptismal rites were administered at the cannon's mouth, they having declared themselves "free and independent states," and then afterwards first formed themselves into a loose confederation and then into a strong constitutional federation. Since the adoption of the Constitution, however, Congress is the only branch of the national government that can authorize the creation of new states for the purpose of enabling them to be admitted to the Union, but even it has had to adopt different methods at different times, as dictated by the circumstances of the hour. But the most common mode of procedure pursued,

and the one followed in the admission of our own Queen of the Mountains, is as follows:

The people of an organized territory, having for certain reasons concluded that they wished to have the same admitted to the Union as a state, send a petition to Congress, through their delegate having a seat therein, praying that that august body pass an act authorizing them to form a state government. If Congress is of the opinion that such territory has a number of inhabitants sufficient to warrant their being permitted to form a state government and apply for admission into the sisterhood of states, it grants the petition and passes what is called an "Enabling Act." This act, among other things, provides for the calling of a constitutional convention in such territory, the duty of which is to frame a Constitution, republican in form, and submit the same to the people thereof for adoption or rejection. If it is adopted, duly authenticated copies of the Constitution are sent to Congress and to the President. These copies are carefully examined, and if it appears satisfactorily to Congress from them, or otherwise, that the Constitution framed is in conformity with our institutions, the new state is straightway admitted into the fold. But if either Congress or the people of the territory reject the Constitution as framed by the constitutional convention, then a new convention must be called and a new Constitution proposed.

To the third and last question numerous and various answers may also be given, but the chief reason we have an "indestructible Union formed of indestructible states," and not simply one central government having all powers as are now exercised by both our state and national governments combined, is because by this means only could one of the main theories of our government, to-wit, the *decentralization* of power, be carried out the most effectively. That is, the combined experience of all nations which have existed since first old time began convinced the fathers

that the constant and natural tendency of all governments to centralize was an extremely dangerous one to the perpetuity of free institutions, and hence should be guarded against in the general government they were organizing to the greatest possible extent; for as the general government of any nation grows stronger and stronger by centralizing in itself the power originally reposed in the hands of the people, to that extent are the inherent rights and liberties of the people taken away. A fitting example of this tendency, and of its result when no efficient means of checking it is provided for, can be gleaned from the history of Rome, that at one time proud mistress of the world, between the date of the organization of the Republic and that of the establishment of the Empire under the second Cæsar. When the Roman Republic was first organized the great mistake made by its founders was that they failed to provide a means for the decentralization of power, but permitted the entire nation to be governed directly by one central government, which for centuries had its capital in the City of the Catacombs and of the Popes, and hence as time flew on into eternity the central government gradually, and perhaps almost imperceptibly, but nevertheless surely, usurped the power originally reposed in the hands of the people, until at last Augustus Cæsar felt able to proclaim himself emperor of an almost unlimited monarchy, instead of the head of a democratic republic. That such should not be the ultimate fate of the great Western Republic, the founders thereof determined that its general government should have only such powers as might be necessary to insure to it perpetual existence, and that all other powers should be reserved to the people, except such as they have forbidden themselves to exercise, to be set in action by them through the agency of state governments framed for that purpose. It will be at once noticed that the effect of this is to make these state governments extremely watch-

ful and jealous of any encroachment on their power by the general government, and hence guard against the centralization of power. As long as our states exist, just so long will it be impossible for our national government to assume any other form than that of a representative republic,—at least so far as the states themselves are concerned.

Another reason why we have states is because of the great diversity of industries common to different parts of the country, and the different methods of carrying them on, each of which requires laws and regulations not at all similar. Thus, the Montana laws and regulations in regard to water rights would be absolutely detrimental if enforced in Wisconsin or in New York, and *vice versa*. Again, the laws and regulations of Montana relative to mines and mining, because of climatic or topographic differences, might be entirely inapplicable to any other part of the country. And so on indefinitely.

Still another reason why we have states is because there were such organizations at the time this government was established, the original thirteen states having been in existence as independent nations prior to the formation of our present constitutional government.

Having learned what constitutes a state, and how and why they are constituted, we will now take up the study of the Constitution of Montana in the order in which it was framed.

#### ENACTING CLAUSE OR PREAMBLE.

We, the people of Montana, grateful to Almighty God for the blessings of liberty, in order to secure the advantages of a state government, do, in accordance with the provisions of the Enabling Act of Congress, approved the twenty-second of February, A. D. 1889, ordain and establish this Constitution.

The chief importance attached to the enacting clause or preamble lies in this, that it furnishes a valuable aid in interpreting the provisions of the Constitution, for it places beyond dispute the questions, "From whence is the source



of power?" and, "For the attainment of what object or objects was the Constitution framed and ratified?"

The first question is answered by the declaration, in unmistakable terms, that "we, the people," meaning the people of the State of Montana, for the attainment of certain ends, "do ordain and establish this Constitution." Thus, the very first words of the Constitution show that the form of government in this state is republican—that is, one in which the people are the sources of power, and not a monarch or a few aristocrats or nobles. And in order that there might be no mistake who these people are, the preamble states that they are the *people of Montana*.

The second question is also answered in unmistakable terms by the declaration that this Constitution was ordained and established in order to secure to the people of Montana "the advantages of a state government." But this gives rise to another question, "What are these advantages?" The advantages of statehood, so far as the people of Montana are directly concerned, are many, among the most important of which are the following: First, the guaranty by the United States of a republican form of government; second, the right to have a voice in the councils of the nation; and, third, the very important right of local self-government.

It will be noticed that the preamble very carefully refrains from declaring that one of the objects for which the state of Montana was formed was to secure independence. This is because when the United States Constitution was adopted the states gave up to the United States all their inherent power as independent nations, reserving only to themselves such powers as were necessary for local self-government, and all states which have come into the Union since that time have had to do likewise. Hence, the people of the State of Montana, as members of such political body, can exercise no power which naturally belongs to an inde-

pendent sovereignty, such as making treaties with foreign nations or with other states, etc., but as members of that greater political unit called the United States they can do these things.

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## ARTICLE I.

### BOUNDARIES.

The boundaries of the State of Montana shall be as follows, to-wit: Beginning at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington with the forty-fifth degree of north latitude; thence due west on the forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington; thence due south along the thirty-fourth degree of longitude, to a point formed by its intersection with the crest of the Rocky Mountains; thence following the crest of the Rocky Mountains northward to its intersection with the Bitter Root Mountains; thence northward along the crest of the Bitter Root Mountains, to its intersection with the thirty-ninth degree of longitude west from Washington; thence along the thirty-ninth degree of longitude northward to the boundary line of the British Possessions; thence eastward along that boundary line to the twenty-seventh degree of longitude west from Washington; thence southward along the twenty-seventh degree of longitude to the place of beginning.

The boundaries of the State of Montana, as defined by this Article, are the same as when the state was originally admitted into the Union, on the 8th day of November, 1889, they never having since been changed, nor are they ever likely to be. Should it be advisable to at any time change the boundaries of the state, however, this can be done only with the consent of our own legislature and the concurrent consent of Congress, together with that of the legislatures of all other states in any manner concerned, if there are any such. Thus, the legislature of Montana cannot change her boundaries unless the consent of Congress is first obtained, and not even then if any of the neighboring states are affected,

or likely to be affected, by the proposed change, unless their legislatures also consent thereto. And the reverse also holds good, for Congress cannot change the boundaries of a state without the consent of its legislature and the consent of the legislatures of all other states concerned. Should at any time the boundaries of Montana be changed, however, such change would in effect amend this Article to the extent thereof, and that without the necessity of a formal amendment being made in any of the ways prescribed by Article XIX., Sections 8 and 9, of the Montana Constitution, relative to amendments.

The reason for defining particularly the boundaries of Montana was to specifically designate the area over which she should have exclusive jurisdiction so far as the self-government of her people is concerned, and thus make it practically impossible for her to get into quarrels or wrangles with her sisters over questions of disputed authority.

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## ARTICLE II.

### MILITARY RESERVATIONS.

Authority is hereby granted to and acknowledged in the United States to exercise exclusive legislation as provided by the Constitution of the United States, over the military reservations of Fort Assinaboine, Fort Custer, Fort Keogh, Fort Maginnis, Fort Missoula and Fort Shaw, as now established by law, so long as such places remain military reservations, to the same extent and with the same effect as if said reservations had been purchased by the United States by consent of the legislative assembly of the State of Montana; and the legislative assembly is authorized and directed to enact any law necessary or proper to give effect to this article.

*Provided*, that there be and hereby is reserved to the state the right to serve all legal process of the state, both civil and criminal, upon persons and property found within any of said reservations in all cases where the United States has not exclusive jurisdiction.

This Article is of very little importance so far as the people of this state are concerned, as it simply guarantees to the general government exclusive jurisdiction over certain forts and their accompanying military reserves which the United States had established in Montana territory for the purpose of keeping the Indians under proper restraint, and which they still desired to maintain after the territory was admitted to statehood. The reason for this Article being inserted in the Constitution was because the Congress of the United States made this one of the conditions which the State of Montana had to comply with before it would permit her to be admitted into the Union.

To the guaranty of exclusive jurisdiction in the United States over all military reservations situated within the boundaries of the State of Montana, however, there is a very important exception in this, that the state reserves to itself the right to serve all writs, orders and other process issuing out of the courts of this state in any action, whether civil or criminal, over which they have jurisdiction. Had it not been for this these reservations would have become the refuge of criminals fleeing from the strong arm of justice, as well as the refuge of debtors whose object is to hinder, delay or defraud their creditors out of what justly belongs to them. For these reasons, the wisdom of this exception becomes doubly apparent.

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### ARTICLE III.

#### A DECLARATION OF RIGHTS OF THE PEOPLE OF THE STATE OF MONTANA.

This Declaration or Bill of Rights of the people of the State of Montana is in many respects similar to the United States Bill of Rights, except that it is very much more comprehensive, and instead of prohibiting the government



of the United States from doing certain things, as is the case with the national Bill of Rights, this one declares specifically what laws the people of Montana shall not be allowed to pass through their Legislative Assembly.

In other words, the people of Montana, in whom reposes the sovereign power of their own local self-government, having learned from the bitter experience of the ages that even a free people, endowed with the God-given right to govern themselves, might in moments of anger, of prejudice or of haste enact certain laws the effect of which would be extremely evil and tyrannous on at least a minority of them, and perhaps a majority, determined to build up a safe-guard against the enactment of the same by declaring by means of the Declaration or Bill of Rights that their Legislative Assembly shall not be permitted to pass them. All other laws, however, that the Montana Legislative Assembly is not prohibited from passing by the Bill of Rights or by other provisions of this Constitution, can be enacted by it.

## SECTION I.

### ALL POLITICAL POWER VESTED IN THE PEOPLE.

All political power is vested in and derived from the people; all government of right originates with the people, is founded upon their will only and is instituted solely for the good of the whole.

The effect of this section is to declare in terms unmistakable from whence is all political power in Montana derived and in whom it is vested, and therefrom lay down a specific rule for the construction of this Constitution. But it would seem that the same end was attained by the declaration in the preamble that "We, the people \* \* \* ordain and establish this Constitution," and hence its reiteration by means of this section was entirely unnecessary.

We presume, however, that the reason for its insertion was to "make assurance doubly sure."

## SECTION 2.

### RIGHT OF THE PEOPLE TO ALTER OR ABOLISH THEIR CONSTITUTION OR FORM OF GOVERNMENT.

The people of the state have the sole and exclusive right of governing themselves, as a free, sovereign and independent state, and to alter and abolish their Constitution and form of government, whenever they may deem it necessary to their safety and happiness, provided that such change be not repugnant to the Constitution of the United States.

The provision that the people of Montana have the right to govern themselves as a free, sovereign and independent state is misleading, as it does not mean what it seems to say. In fact, the people of Montana have no such right, for in organizing themselves under a state government and being admitted as such into the Union, they gave up to the United States their state freedom, sovereignty and independence. Therefore, the only meaning that it can have is simply that the people of Montana retain to themselves the right of local self-government. True, the states in their relations with each other are practically foreign and independent sovereignties, except as limited by the national Constitution, yet in their relations with the United States they are regarded as domestic and dependent. This is too well settled to admit of dispute.

The second provision, that the people shall have the right to alter or abolish their Constitution and form of government, whenever their safety or happiness may require such a course, was entirely unnecessary, for the right to at any time change, amend or abolish their Constitution or form of government is inherent in them, so long as the Constitution or form of government as changed or amended does not conflict with the Constitution, laws and treaties of the United States. That is, the people of Mon-

tana and of every other state have the inherent right to at any time change or amend their constitution or form of government, and even create a new one to take the place of the old, if the Constitution or form of government thus changed, amended or created is republican in form and acknowledges the sovereignty of the United States Constitution and government. The people of Montana cannot if they would, therefore, change their form of government to such an extent as to make it a monarchy or an aristocracy. For that reason, the only possible end attained by the insertion of this provision is to place beyond dispute the question of whether or not the people of this state have the right to change or amend their Constitution or form of government, it being understood that the same shall be still republican in form after this is done.

### SECTION 3.

#### THE RIGHTS OF PERSONS.

All persons are born equally free and have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties, of acquiring, possessing and protecting property, and of seeking and obtaining their happiness in all lawful ways.

This section was inserted to emphasize the fact that all men are born free and equal, and have certain inherent rights, and that in Montana at least there shall be no law passed the effect of which is to discriminate against a certain class or nationality residing within her borders, or against the citizens of other states or the citizens or subjects of foreign nations. But this does not mean that all men, in order that they might be equally free shall have the right to vote, for equal freedom does not consist in having a direct voice in the management of government. It means simply that all the people of Montana shall be ruled justly and impartially by a government of their own choice. If this were otherwise, then women and children

and felons and persons *non compos mentis* might justly complain under this section that they were unjustly and wrongfully discriminated against, because they cannot vote, while the truth of the matter is that to vote is not a right, but a privilege, which privilege only becomes a right after it is granted.

Nor does it mean that everybody can do whatever he pleases, without regard for the rights of others. Far from it. If such were the case, then would liberty be license and freedom worse than the most abject tyranny. But it does mean that the people of Montana have certain *inherent rights* which cannot or should not be taken away from them by law, in contradistinction to those rights of the people which are *conventional*. That is, they have certain rights which naturally, essentially and inalienably belong to them, and which should be secured to them in such a manner that the same could be taken away only by unjust and unlawful laws, for laws are not always just nor do they always stand the test of legality; also, they have certain other rights called conventional rights which are given by law or are the out-growth of custom, and hence can rightfully be taken away, for that which the law gives it can also take away. Among the latter is the *right* to vote, while among the former is the right of life, of liberty and of property.

To protect the people in the full enjoyment of their inherent rights is the great end or object of all government. A government that does not do this is scarcely worth having.

## SECTION 4.

### RELIGIOUS FREEDOM.

The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed, and no person shall be denied any civil or political right or privilege on account of his opinions



concerning religion, but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, by bigamous or polygamous marriage, or otherwise, or justify practices inconsistent with the good order, peace or safety of the state, or opposed to the civil authority thereof, or of the United States. No person shall be required to attend any place of worship or support any ministry, religious sect or denomination, against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.

Three great objects are accomplished by this section, to-wit: Religious freedom, so far as this does not involve immoral practices; the prohibition that a religious test shall be required for the performance of any civil or political function; and the prohibition that any religious denomination shall be shown preference by this state.

The reason for the first was to avoid the great evils flowing out of the attempts of European nations to control the consciences of their people in regard to religious profession or worship. It was for the purpose of securing religious freedom and of escaping from the clutches of the established churches of England, of Holland and of France that most of our forefathers came to these then wild and desolate, though fertile, shores. And shall we, their children and the heirs to their bitter experiences, heed not the warning? We would be worse than ungrateful for the lessons of the past should we not do so, and we would be unfit and incapable to exercise the right of self-government. But the fact that we are given the freedom of religion does not mean that we will be protected in carrying into effect the practices of all religions, however vile, immoral or repugnant they may be, but simply that we may believe in such practices and teach them. Thus, any person residing in this state may believe in the doctrines and practices of Mormonism and teach them, but let him try and put his belief into practice by entering into plural marriages and he will at once be arrested and

punished,—not because he believed in the doctrines of Mormonism or preached them, but because he violated the bigamy laws of the state.

The reason why we have provided that no religious tests shall be required in this state for the performance of any political or civil function, such as holding office, giving evidence in courts of law, etc., is also because the priceless lessons of the ages have taught us that in all nations where religious tests have been required they have been fraught with evil results.

And lastly, the reason why the provision that no laws shall be passed in this state giving any preference to any religious denomination or mode of worship, by appropriating money to its use and benefit out of the state treasury or otherwise, was inserted was to guard against impartiality in this respect, and therein forever put a damper on those twin evils, sectarian jealousy and discontent.

## SECTION 5.

### FREEDOM OF SUFFRAGE.

All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

The end attained by the adoption of this section is to guarantee to all those who are entitled to exercise the right of voting that they shall not be coerced by either the civil or military authority of this state, but shall be allowed to cast their ballots according to the dictates of their own consciences.

The reason for it is too apparent to need comment, for in this manner only can the freedom and purity of our institutions be maintained. "Freedom is the freeman's will."

## SECTION 6.

## A FAIR AND IMPARTIAL TRIAL GUARANTEED.

Courts of justice shall be open to every person, and a speedy remedy afforded to every injury of person, property or character; and that right and justice shall be administered without sale, denial or delay.

This section recognizes the truth of the maxim, that "all men should be equal before the law." It is impossible to make all men equal socially or morally, but before the bar of justice they should, and by this section are made to be equal. Were it otherwise, the word freedom would be but a senseless name and a hollow mockery. And in addition to declaring that the courts of justice shall be open to no particular class or classes of persons, but to all persons, this section also provides that justice as administered by such courts shall be dealt out without sale, denial or delay. The purpose of this is to guard against the base practice prevalent in many nations to pollute justice by selling the decisions of the courts to the highest bidder. True, this provision does not wholly protect the people from the sale of judicial decisions, but it puts a very material check on the same, for it ever holds up before the eyes of those judges who are inclined to be dishonest and corrupt,—which we wish here to state is the exception, not the rule,—the gloomy and dismal spectre of a life behind prison bars.

It is a favorite maxim of the common law that there shall be "no loss without an injury—*damnum absque injuria*." But because a man suffers an *injury* as a direct result of a *loss* he has sustained, it does not necessarily follow that he has a *remedy* for such injury; that is, the right to prosecute an action in a court of law or equity for the purpose of reimbursing him for all loss he has sustained. But al-

though it may not necessarily follow that one has a remedy for an injury he has sustained, yet common sense and justice dictate that he should have. Hence, that this desirable end might be attained, this section also provides not only that every person in this state shall be afforded a *remedy* for any loss he has sustained because of an injury to either his person, his property or his character, but goes further and declares that such remedy shall be *speedy*. Therefore, in this respect the rights of the people are amply secured.

To us who by the grace of Heaven have never been forced to live under a government where the inherent rights of the people are not fully secured, it is almost wholly impossible to comprehend the value and importance of these and other provisions of a similar nature; but although we cannot fully comprehend their importance, yet should we be extremely watchful and diligent in seeing to it that they are continually secured to us by wise and just laws. For it must be remembered that the most dangerous foe to a free, self-governing people is their own sloth, carelessness, and neglect in diligently superintending at all times the administration of the functions of government.

## SECTION 7.

### SECURITY OF PERSONS AND PROPERTY.

The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures and no warrant to search any place or seize any person or thing, shall issue without describing the place to be searched, or the person or thing to be seized, nor without probable cause, supported by oath or affirmation, reduced to writing.

It is very evident that this section was to a great extent copied from Article IV. of the United States Bill of Rights, and was undoubtedly framed to serve the same purpose—



the protection of the people from the re-enactment of one of the worst grievances against which our forefathers rebelled, to-wit, unreasonable searches and seizures.

Under it no person can be arrested or searched, nor can his buildings be searched or his papers or effects be searched or seized, except by an officer of the law having in his possession authority so to do. This authority is called a *warrant*, and in order to protect the people from unreasonable, vindictive or frivolous searches and seizures it is provided that such warrant shall be in writing and shall particularly describe the place to be searched or the person or things to be seized, and that it shall not be issued except upon probable cause, supported by the oath or affirmation of the person asking to have the same issued. If a warrant does not show all these things on its face it is irregular, and the officer serving it will be held liable in damages to the aggrieved party to the full extent of all injury he has sustained. If the warrant is regular on its face, however, no matter whether justly issued or not, the officer serving same incurs no liability thereby.

There is, however, an exception to the right of the people to be secure in both person and property from unreasonable searches and seizures, in the case of those districts where because of invasion, insurrection or rebellion the functions of the writ of *habeas corpus* are suspended and martial law proclaimed. This is because at such times the safety of the people and of the state demand that a speedier and more summary mode of procedure be substituted for that in vogue in times of peace and quiet. But as soon as all danger of invasion, insurrection or rebellion in such district is past, the original status must at once be restored.

## SECTION 8.

## MANNER OF PROSECUTING CRIMINAL OFFENSES.

Criminal offenses of which justices' courts and municipal and other courts, inferior to the district courts, have jurisdiction, shall in all courts inferior to the district court be prosecuted by complaint. All criminal actions in the district court, except those on appeal, shall be prosecuted by information, after examination and commitment, by a magistrate, or after leave granted by the court, or shall be prosecuted by indictment without such examination or commitment, or without leave of the court. A grand jury shall consist of seven persons, of whom five must concur to find an indictment.

A grand jury shall be drawn and summoned when the district judge shall in his discretion consider it necessary, and shall so order.

The Constitution of Montana expressly provides for a supreme court, district courts and justices' courts, and such other courts, inferior to the district courts, as the Legislative Assembly shall from time to time see fit to establish (Article VIII., section 1). Of these different courts, the supreme court and the district courts only are *courts of record*; that is, they are judicial, organized tribunals having attributes and exercising functions independent of the person of the magistrate or judge designated to hold them, and proceeding according to the course of the common law. Justices' courts and all other courts which the legislature of this state may establish are *inferior courts*; that is, courts which have but a limited jurisdiction only, and can exercise no functions independent of the person of the justice of the peace or magistrate generally designated to preside over them. Neither do they proceed according to the course of the common law.

Criminal offenses in these inferior courts, this section provides, must be prosecuted by complaint; that is, as the term is herein used, by a statement in writing, made by any person to such inferior court or magistrate, charging another person with being guilty of some designated of-

fense, which statement must be sworn to or affirmed by the person making same. This was so provided in order to make the mode of procedure in the prosecution of the few petty offenses over which inferior courts are given jurisdiction (see Article VIII., section 21) as simple and as easily understood as possible, and at the same time as effective as the circumstances demand.

In the district court, however, the mode of procedure in criminal actions is quite different; in fact, there are several different modes by which prosecutions may be carried on, as follows: All criminal offenses over which the inferior courts have jurisdiction, and which have been tried by them, may be prosecuted anew in the district court by transcript on appeal from such inferior courts; all offenses, however, over which the district court has original jurisdiction (see Article VIII., Section 11,) must be prosecuted therein either by information after examination and commitment by a magistrate, or by information after leave has been granted in open court to file same, or by indictment preferred by a grand jury. An *information after examination and commitment* by a magistrate is an accusation in writing, charging a person with a public offense, and presented and signed by the county attorney and filed in the office of the clerk of the district court, after the person charged has been examined as to his probable guilt before some magistrate and bound over on commitment to answer to the district court. An *information after leave has been granted in open court* to file same is a document similar to the above, except that it is filed by the county attorney with the clerk of the district court only after an order has been made by the court to that effect, instead of after examination and commitment. An *indictment* is an accusation in writing, presented by a grand jury to the district court, charging a person with a public offense. A *grand jury* in

this state consists of a body of seven men regularly and impartially summoned by the sheriff of their own county, upon the order of the district judge, to inquire, under the direction of the court, into all public offenses committed and triable within such county, and return to the court all indictments found, the concurrence of five of their number being necessary to find an indictment.

All offenses committed against the United States *must* be tried upon an indictment or presentment of a grand jury, but such is not the case in this state, though some or all of them *may* be. The usual method, however, by which criminal offenses are prosecuted is by information, either after examination and commitment or after leave granted by the court. This is because it is much the cheaper method, and as long as it is fairly and impartially conducted, is just as good as by indictment. But should such not be the case, then the district judge in his discretion has the power to call a grand jury to straighten matters out.

The object of all this is to prevent to as great an extent as possible evil-minded and evil-disposed persons from annoying peaceable and innocent people with groundless or frivolous accusations.

This section applies only to all criminal offenses committed against the laws of this state in time of peace. In time of war martial law takes the place of civil law in the district in which the war is actually being waged, and all offenses committed therein, whether by soldiers, sailors or civilians, are triable by court-martial. This is because at such time justice must be dealt out quickly and summarily, which would be impossible, though fairer, under the slow justice of peace.



## SECTION 9.

## TREASON AND BILLS OF ATTAINDER.

Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid or comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislative assembly; no conviction shall work corruption of blood or forfeiture of estate; the estates of persons who may destroy their lives shall descend or vest as in cases of natural death.

This section, among other things, lays down a specific definition of what treason against Montana shall consist in. Treason is the highest and most heinous civil crime that any man can commit under our laws, and its committer is always the object of the most bitter and unreasoning hatred of the people. Therefore, in order to guard against the possibility of the legislature in times of great public unrest from passing a law declaring that the commission of certain acts shall constitute treason, which, in fact, because of the enormity of the offense, should not, but should constitute a crime of a lesser degree, it was thought best that treason should be specifically and for all time defined by the Constitution, thus taking the matter out of the hands of the legislature entirely. Under the above definition only open acts of war constitute treason. Hence, any person in this state may talk treason as much as he pleases, and even go so far as to conspire against the established government, yet unless he commits some overt act of hostility he is not guilty of treason.

The provision in the foregoing section declaring that no person shall be convicted of treason except on the testimony of at least two witnesses to the same overt act, or on his confession in open court, was also inserted as a precautionary measure to prevent the legislature from enacting, in times when public feeling runs high and is not

always just, any law which might permit one to be convicted of treason on a less amount of proof than is now required. This provision is in accordance with good common sense and with sound, unprejudiced reason, for it is very plain that no person should be convicted of such a grave offense on a less amount of proof than is herein required.

Neither shall the Legislative Assembly of Montana pass any law inflicting punishment without trial. The insertion of this provision, however, was entirely unnecessary, as the United States Constitution prohibits the states from passing bills of attainder (Article I., Section 10). Neither shall any law be passed the effect of which would be to destroy the inheritable qualities of the blood of one convicted of treason or of some other felony, or which shall provide that after such conviction the property he might possess shall be forfeited to the state, or otherwise, and thus unjustly punish the innocent descendants of such person into remote generations. But, instead, the descendants of persons convicted of treason or felony shall be permitted to inherit through and from them as in other cases, as shall also the descendants of all persons who may commit self-murder, or suicide.

## SECTION 10.

### FREEDOM OF SPEECH.

No law shall be passed impairing the freedom of speech; every person shall be free to speak, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and that in all suits and prosecutions for libel, the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

The freedom of speech is one of the great bulwarks of American liberty, and is considered next in importance to the right to life and to liberty of person. It is one of the chief

stumbling-blocks to tyranny and oppression. Should it at any time be taken away from the people, then would their liberties indeed be in dire peril. But freedom of speech does not mean that we can speak, write or publish anything on any subject, no matter whether it injures others or not, and not be held responsible therefor. It means simply that we may do so, but if any person is injured thereby we will be liable to him in damages to the full extent of his injury, as well as to the state criminally under certain circumstances. That is, other people have rights as well as ourselves, which we are bound to respect, and therefore if we speak, write or publish anything that injures them in their reputation, it is but just and right that we should be held responsible therefor.

But in all civil cases for libel the truth of the matter spoken, written or published, and all other mitigating circumstances, may be proven in justification, for the purpose of reducing the amount of damages. And in all criminal prosecutions for libel the truth of the matter written or published may also be proven by the person accused for the purpose of securing his acquittal, but no person can be acquitted for libel unless he proves, in addition to the truth of such matter, that the same was written or published without any malice or spite on his part, and that he did so, not for the purpose of injuring any one's reputation, but to do some good. This is different from the old common law rule that "the greater the truth, the greater the libel," and it is decidedly more just.

In most cases it is the office of the judge to determine the law and the jury to determine the facts, but in libel suits and prosecutions under this section it is the office of the jury to determine both the law and the facts, under proper instructions as to what the law is by the court.

## SECTION II.

## EX POST FACTO LAWS, ETC.

No *ex post facto* law, nor law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises and immunities shall be passed by the Legislative Assembly.

An *ex post facto* law is one which is designed to punish as criminal the commission of certain acts committed before the law was passed which at the date of their commission were not criminal, or to inflict a greater punishment on one for the commission of a criminal act than that which he would have received were he prosecuted under the law in force at the time the crime was committed. In other words, to quote from the Supreme Court of the United States, "An *ex post facto* law is one which renders an act punishable in a manner in which it was not punishable when it was committed."

A law impairing the obligation of contracts is one which in any manner changes the terms of a contract previously entered into, thereby making the same entirely void or of less value to either one or all of the parties thereto than it was prior to the date of the passage of such law. For instance, if one person should enter into an agreement with another to do certain lawful things, under certain conditions, and the legislature shortly after same was entered into should pass a law the effect of which would be, could it be enforced, to invalidate such agreement or make it of less value to either or both of the parties than it otherwise would have been, such law, so far as it applies to this and other similar contracts entered into before its passage, would be one impairing the obligation of contracts, and therefore void. But the Legislative Assembly has the power to pass all laws relative to the conditions of future valid



contracts. The obligation of contracts void from the beginning, however, such as contracts for immoral purposes, etc., is not impaired by the passage of a law annulling them, for they never had any legal existence and could never be enforced. This proviso has the same effect in civil cases as the one concerning *ex post facto* laws has in those of a criminal nature.

The reason for the above two provisions is plainly apparent, so it will not be necessary to comment thereon. But their insertion in our state Constitution was entirely needless, as they are forbidden to the states by Article I., Section 10, of the United States Constitution.

Neither can the legislature pass any law making an *irrevocable* grant of any special privileges, franchises or immunities, but it may grant such special privileges, franchises or immunities with the condition that they *may be revoked* by it or any subsequent legislature at any time. This provision is very important, as it interposes a barrier on behalf of the people against their being saddled with obligations, special in their nature, and which may in time become burdensome and even threaten their very liberties.

## SECTION 12.

### IMPRISONMENT FOR DEBT.

No person shall be imprisoned for debt except in the manner prescribed by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort where there is strong presumption of fraud.

One of the great curses of European nations was imprisonment for debt. In order to guard against this, except in certain extreme cases where common sense dictates that a creditor should be allowed to arrest his debtor if he wishes so to do, the foregoing section was inserted. These cases are: First, when a debtor refuses to give up his

property to his creditors, and is about to either dispose of or transport same out of this state, with intent to defraud them; and, second, when because of his incurring certain liabilities not arising from contract, it is his fraudulent intent to dispose of all property in his possession, part or all of which property might belong to the person or persons to whom he is liable, and thus render any judgment his creditors might recover against him incapable of satisfaction. But one arrested for debt cannot be imprisoned if he furnishes to his creditors an indemnity bond signed by sufficient sureties to guarantee the payment of his obligations if judgment goes against him, and in no case more than twenty-four hours unless his creditors pay to the sheriff the expenses of keeping him.

## SECTION 13.

### RIGHT TO BEAR ARMS.

The right of any person to keep or bear arms in defense of his home, person or property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

The guaranty given to the people of Montana by this section is an extremely important one, for besides bestowing upon them an additional security to their persons, homes and property than that afforded by the regular constituted authority, it also enables them to be constantly familiar with and proficient in the use of firearms, which is very important indeed in a nation that depends almost wholly upon her citizen-soldiers to defend her.

By virtue of the laws enacted under this section, any Montanian may not only bear arms to protect his own person, home or property, but also to protect the homes, persons and property of those whom he is bound either morally

or legally to protect. Thus, a husband may bear arms in defense of his wife, a father in defense of his son or daughter, a son in defense of his father, mother or sister; a master in defense of his servant, etc., and all able-bodied males between the ages of eighteen and forty-five must bear arms in defense of their homes and country when called upon to do so, or to suppress local insurrection or keep the peace in their respective counties, when called upon by the sheriff thereof for that purpose.

But this guaranty to bear arms means that they must be borne openly, so that they can be readily seen. This was so provided to guard against secret stealth, by enabling a person to as great an extent as possible not to be taken unawares.

## SECTION 14.

### PRIVATE PROPERTY CANNOT BE TAKEN WITHOUT JUST COMPENSATION.

Private property shall not be taken or damaged for public use without just compensation having been made to, or paid into court for the owner.

It often becomes necessary that private property, and especially lands, should be taken for public or *quasi*-public purposes. The right to do this is called the right of "eminent domain." Thus, under the right of eminent domain, the state, county, city or town, and even a school district, has the power to take private property for its own use whenever such a course is necessary. Railway corporations, being *quasi*-public in nature, may do likewise for their road-beds, depots, etc., as may also other companies or persons for undertakings of a similar nature. This is because if such were not the case, the hands of the public would be hopelessly tied in this respect, and progress be delayed an hundred years.

But before private property can be taken for public use the owner thereof must be fully compensated therefor. This may be accomplished by agreement between the parties as to the amount to be paid, but if they cannot come to an agreement in this respect, then an action must be commenced in the district court for the purpose of "condemning" the property sought to be taken and its value determined by three commissioners appointed by the court. If either party is not satisfied with the award made by these commissioners, then he may appeal to the court within thirty days from the date on which their report is filed, in which event the value of the property condemned and in dispute must be re-assessed by a jury, the verdict of which is final and must be accepted by all parties. The reason for the provision that no private property shall be taken for public use without compensation is very apparent, for it would be manifestly unjust if such were not the case. Besides, it would be in violation of that principle of the Constitution that every man shall be secure in the enjoyment of his life, his liberty and his property.

## SECTION 15.

### WATER RIGHTS, ETC.

The use of all water now appropriated, or that may hereafter be appropriated for sale, rental, distribution or other beneficial use and the right of way over the lands of others, for all ditches, drains, flumes, canals and aqueducts, necessarily used in connection therewith, as well as the sites of reservoirs necessary for collecting and storing the same, shall be held to be a public use. Private roads may be opened in the manner to be prescribed by law, but in every case the necessity of the road, and the amount of all damages to be sustained by the opening thereof, shall be first determined by a jury, and such amount together with the expenses of the proceeding shall be paid by the person to be benefited.

In order to encourage the irrigation of lands otherwise unproductive and almost useless, the provision in the foregoing section making the appropriation of all waters for



sale, rental, distribution or other beneficial purposes, together with the right of way over the lands of others for the construction of canals, ditches, aqueducts, etc., necessarily used in connection therewith, as well as reservoirs necessary for collecting and storing the same, a public use, in order that private property might be taken under the right of eminent domain for such purposes, was inserted. The manner of taking private property for these purposes is the same as that in which the state, a county, a railway company, etc., takes the same.

The second provision relative to private roads was inserted in order to guarantee to one who has taken up or purchased lands in such a position as to make it impossible for him to reach the public highway without going over the lands of others, the right to have a private road of his own opened over such lands. But before this can be done the person thus situated must show to the satisfaction of a jury, unless he can enter into an agreement with the party over whose lands he desires to travel for the purchase of a right-of-way, that such private road is necessary, and must pay into court the value of such road as appraised by such jury, together with the costs of the proceeding. It will be noticed that the mode of procedure in condemning and determining the value of property taken for private roads is different than that usually followed in exercising the right of eminent domain; in this, that a jury must determine both the necessity of the road and the value of the property taken, while in the usual exercise of the right of eminent domain the necessity for taking the property is determined by the court and the value thereof is assessed by three commissioners first, and then, if the matter is appealed, by a jury.

## SECTION 16.

## RIGHTS OF PERSONS ACCUSED OF CRIME.

In all criminal prosecutions the accused shall have the right to appear and defend himself in person or by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf; and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

All criminal cases in this state are carried on "in the name and by the authority of the State of Montana," and with the exception of some petty inferior court offenses are prosecuted by the county attorney of the county in which such cases are alleged to have been committed. Hence, it follows as a matter of simple justice that since the state has the right to have one who is skilled in the technicalities of the law and the procedure of the court to prosecute its case for it, the accused had surely ought to have the same right. And so important is this right thought to be that if the accused is too poor to pay his own attorney, and desires the services of one, it is the duty of the court to appoint an attorney to act for him, who receives his compensation from the county. But one accused of crime may defend his own case if he chooses. And even if he has an attorney defend it for him, he has the right to speak in his own behalf if he is so minded.

The right of the accused to demand the nature and cause of the accusation preferred against him was secured to him in order that he might be in a position to prepare his defense, and, if he is innocent, an opportunity to prove the same.

One accused of crime has, in addition, the right to meet the witnesses of the state face to face, and also to have

compulsory process to compel the attendance of his own witnesses. This means that such person or his counsel shall have the right to cross-examine the state's witnesses in order to determine whether they are telling the truth or not; and that he shall have the right to compel the attendance by *subpœna* of certain persons whom he thinks will testify in his favor. The justice of this becomes very evident when we consider that the state has the right to compel by *subpœna* the attendance of witnesses in its own behalf, and has also the right to cross-examine the witnesses of the accused.

The right of the accused to have a speedy and public trial is also very important, for it guards against his being thrown into jail for an indefinite or unreasonable time before he is given a trial, and is more likely to secure to him a fairer trial than if the same was held privately. So is the right that he shall be tried by an impartial jury of the county or district in which his offense is alleged to have been committed. This is considered one of the most substantial pillars of personal liberty. But if the accused finds that the presiding judge is prejudiced against him, or that the people of such county or district are so prejudiced against him that he cannot obtain a fair trial therein, or that it is impossible to obtain a jury having the requisite qualifications in such county or district, or that the presiding judge is kin or has been counsel for either party, or that the county attorney or prosecuting witness has an undue influence over the minds of the people of such county or district, then he shall be entitled to have a "change of venue" to some neighboring county in which such prejudice, etc., does not exist. The state may, however, by virtue of this section, obtain a change of venue for the same reasons that the accused may obtain one.

## SECTION 17.

## IMPRISONMENT OF PROSECUTING WITNESS.

No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than be necessary in order to take his deposition. If he can give security for his appearance at the time of trial he shall be discharged upon giving same; if he cannot give security, his deposition shall be taken in the manner prescribed by law, and in the presence of the accused and his counsel, or without their presence if they shall fail to attend the examination after reasonable notice of the time and place thereof. Any deposition authorized by this section may be received in evidence on the trial, if the witness shall be dead or absent from the state.

It at times happens that it is the intention of the chief witnesses upon whom the prosecution depends to convict one of crime to either conceal themselves so that they cannot be found and served with process at the time the case is called or to leave the state entirely, in order that they may not be compelled to give testimony against the accused and thereby insure his acquittal. To guard against this it has been the policy of all governments from time immemorial to arrest such witnesses and hold them until after the trial. But such a mode of procedure, it was found, almost invariably inflicted great hardships on innocent persons, so in order to interpose a barrier to anything of this nature the foregoing section was framed and adopted.

Under it no witness who is supposed to harbor the intent to either conceal himself or leave the state in order that he may not be compelled to testify against the accused can be arrested and held for a longer time than is necessary for the reduction of his testimony to writing in the form of what is called a deposition; or if he is able to and does give a bond as security for his appearance at the trial he cannot be held even that long. This deposition thus taken may be received in evidence on the trial if such witness is either dead or absent from the state, but not otherwise.



## SECTION 18.

## ADDITIONAL RIGHTS OF PERSONS ACCUSED OF CRIME.

No person shall be compelled to testify against himself, in a criminal proceeding, nor shall any person be twice put in jeopardy for the same offense.

In the olden time it was the custom of making, or attempting to make, persons accused of crime testify against themselves. To attain this end various devices and schemes were resorted to, such as the rack, the whipping post, etc. Such a proceeding, of course, was cruel, inhuman and unjust, and to guard against its occurrence in this state the first provision of this section was inserted. But one may testify against himself if he wishes to do so, by either pleading guilty or making a confession in open court, which amounts to the same thing. And besides, in addition to protecting the accused from being compelled to give testimony against himself, this section also protects a witness in a criminal prosecution from being compelled to give testimony which would tend to incriminate himself.

The second provision, that one shall not be put in jeopardy twice for the same offense, means that he cannot be tried and punished more than once for the commission of the same identical crime. Thus, if one is convicted of larceny on the first day of January, 1900, and is sentenced to serve one year in the state penitentiary, he cannot be again arrested and tried for that offense, though he may be if he commits another act of larceny after he gets out of the penitentiary. But if a person is tried and the jury disagrees, or he is tried and convicted and upon appeal the case is reversed and remanded for a new trial, he has not been put in jeopardy within the meaning of this section, and may be again tried for the same offense before a new jury.

## SECTION 19.

## BAILABLE OFFENSES.

All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

This section means that all persons arrested to answer for crime must, up to the time they are convicted thereof, and even after conviction in certain cases on appeal, be set at liberty if they furnish to the sheriff of the county in which the crime they are charged with is alleged to have been committed an undertaking with sufficient sureties to secure their appearance at the time of trial, except in those cases capital in their nature, such as treason and murder, when it is evident that the person in custody committed the same, or the presumption that such is the case is great. The amount in which this undertaking must be given is determined by the committing magistrate at the time of or at any time prior to commitment, or by the district judge at or before the time the warrant is issued.

## SECTION 20.

## EXCESSIVE BAIL.

Excessive bail shall not be required, or excessive fines imposed, or cruel and inhuman punishments inflicted.

In order that the magistrates whose duty it is to fix the amount of bail upon the furnishing of which one accused of crime must be set at liberty, as provided in the last section, might not fix the amount so high that it would be practically impossible to secure same, the further provision that bail shall not be excessive was inserted. Under it, should the committing magistrate ask too great bail, the case can be taken before the district judge on a writ of

*habeas corpus*, and the bail reduced by him, if in his opinion it is excessive. If the district judge also fixes the bail too high, the case can be carried to the supreme court in the same manner.

A person convicted of any crime not capital may be punished either by imprisonment in the state penitentiary or county jail, or by fine, or by both, as prescribed by law. But in order that such fine may not be unjust, or practically amount to a forfeiture of estate, it was further provided that it should not be excessive. If fines are excessive, an appeal can be had as in other cases.

By cruel and inhuman punishment is meant burning at the stake, drawing and quartering, torturing with hot irons, etc. Until the last two centuries these were universally inflicted, but have now been abolished in nearly all countries, our own nation and state included.

## SECTION 21.

### WRIT OF HABEAS CORPUS.

The privilege of the writ of *habeas corpus* shall never be suspended, unless, in case of rebellion, or invasion, the public safety require it.

The writ of *habeas corpus* is the remedy given for the enforcement of the civil right of personal liberty. Thus, if one believes that he is unjustly or illegally imprisoned or restrained of his liberty, he can apply for a writ of *habeas corpus* to compel the officer or person in whose custody he is to either show a legal authority for such restraint, or, failing in this, to set him free. This great prerogative writ is the best and only sufficient defense of personal freedom. Therefore, that the important privilege afforded by it might be reserved to the people the more securely by means of the Constitution it was inserted therein.

But there are times when the public safety might require the suspension of the privileges of this great writ, such as in case of rebellion or invasion. At these times the slow justice of peace must give way to the summary, though less fair, justice of war—the civil law must give way to martial law. Hence, this section provides that in case of invasion or rebellion only can the privileges of the writ of *habeas corpus* be suspended.

## SECTION 22.

### MILITARY SUBORDINATION.

The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law.

This section was inserted to accomplish two objects. The first of these was to guard against the state government being seized by a successful commander and turned into a military despotism. This is accomplished by rendering the Governor, who is commander-in-chief of the state militia, and therefore has the right to appoint the officers thereof, liable to impeachment by the civil authority if he himself entertains any high-handed designs or refuses to remove officers who entertain such designs.

The second object is to protect the people from the reenactment of one of the principal grievances against which our forefathers rebelled—the compelling of private persons against their consent to feed and shelter the soldiers of their oppressors. But they may be thus quartered if the owner consents thereto, or if, in time of war, the public safety demands that they should be.



## SECTION 23.

## RIGHT OF TRIAL BY JURY.

The right of trial by jury shall be secured to all, and remain inviolate, but in all civil cases and in all criminal cases not amounting to felony, upon default of appearance or by consent of the parties expressed in such manner as the law may prescribe, a trial by jury may be waived, or a trial had by any less number of jurors than the number provided by law. A jury in a justice's court, both in civil cases and in cases of criminal misdemeanor, shall consist of not more than six persons. In all civil cases and in all criminal cases not amounting to felony, two-thirds in number of the jury may render a verdict, and such verdict shall have the same force and effect as if all of such jury concurred therein.

The purpose of this section is to secure to the people of Montana inviolably the old and much revered English custom, which came to us as a part of that rich English inheritance of ours, the common law, that the questions of fact in both civil and criminal cases, with some exceptions, shall be tried by a number of unprejudiced citizens, collectively called a jury, and that the questions of law shall be tried by the court. This was believed to insure a fairer trial than could be had if both the questions of law and fact were decided by the court, and to interpose a very material safeguard to personal freedom.

In this state a jury consists of twelve persons duly qualified and chosen impartially from the county in which they are required to sit, with the exception that in the trial of both civil and criminal suits before a justice of the peace the number shall consist of not more than six persons, and with the further exception that in any event a jury may consist of a less number than that provided by law, if both parties consent thereto. But in all cases of a civil nature, and in all criminal cases not amounting to felony (offenses not punishable by death or by imprisonment in the state penitentiary), a verdict may be rendered by the concurrence

of two-thirds of the whole number of jurors, which verdict has the same force and effect as if the whole number concurred therein, and this is true whether such cases were tried in the district court or before a justice of the peace.

There are certain cases, however, in which a trial by jury may be waived, as follows: In all criminal prosecutions, whether they amount to felony or not, a jury is waived if the defendant pleads "guilty" to the charge preferred against him. This is because his pleading thus has the same effect as if the jury found a verdict of "guilty" against him. If he does not plead guilty, however, and the charge preferred against him amounts to felony, then he must be tried by jury, and the same cannot be waived. But in all criminal prosecutions not amounting to felony the rule is different, for although the defendant is entitled to a jury trial as in other cases, yet the same may be waived by the consent of both parties made in open court and entered in the docket or minutes. In such event the case is tried by the judge or justice of the peace or police judge sitting alone.

So much in regard to the waiver of a jury in criminal prosecutions; now as to civil suits. In these the right of trial by jury may be waived in all cases if both parties consent thereto, coupled with the consent of the presiding judge under certain circumstances, though it is the presumption in all civil cases brought in the district court that a jury must be had unless the same is expressly waived. This is entirely the reverse of the rule relative to all civil suits brought before a justice of the peace, however, for in such cases it is presumed that the services of a jury are not required, and hence the case will be tried without one unless either party expressly demands a jury trial. Trial by jury may also be waived in certain civil suits when the defendant fails to answer or demur to the plaintiff's complaint

within the period of twenty days after he was served with summons, in which case the plaintiff is entitled to judgment by default.

This section applies only to all cases at law. All cases in equity are decided by the judge alone.

## SECTION 24.

### FOUNDATION OF CRIMINAL LAWS.

Laws for the punishment of crime shall be founded on the principles of reformation and prevention, but this shall not affect the power of the legislative assembly to provide for punishing offenses by death.

The foregoing section was designed simply for the purpose of laying down a rule which the Legislative Assembly of this state must follow in prescribing the punishment of crime. Under it no law can be passed providing for the punishment of a criminal offense, except in those cases where the death penalty is inflicted, unless such law is so framed as to tend to reform the person convicted and to prevent others to as great an extent as possible from committing a similar offense.

## SECTION 25.

### RIGHTS OF ALIENS, ETC.

Aliens and denizens shall have the same right as citizens to acquire, purchase, possess, enjoy, convey, transmit and inherit mines and mining property, and milling, reduction, concentrating and other works, and real property necessary for or connected with the business of mining and treating ores and minerals; *provided*, that nothing herein contained shall be construed to infringe upon the authority of the United States to provide for the sale or disposition of its mineral and other lands.

An alien is one not a citizen of the United States, but a citizen or subject of some foreign power. A denizen, in the

United States, is one occupying a sort of middle ground between an alien and a natural-born citizen, and partakes of the nature of both. Under the common law an alien could neither purchase, devise nor inherit real property; and while a denizen could both purchase and devise such property, yet he also could not inherit it. In order to change this rule in regard to mining property, which is real estate, and thus encourage to as great an extent as possible the development of one of our chief though still infant industries, i. e., mining, the foregoing section was adopted.

## SECTION 26.

### FREEDOM OF ASSEMBLY AND OF PETITION.

The people shall have the right peaceably to assemble for the common good, and to apply to those invested with the powers of government for redress of grievances by petition or remonstrance.

Even to this day in many foreign nations the people are forbidden to assemble together for the purpose of discussing political questions, for fear that if they were allowed to do so a revolution against the constituted authority would the easier be brought about. But in this country the people, and not one man or a small body of men, are the sovereigns, and hence the reason for their being prevented from meeting together for political purposes is entirely absent. And not only are the people of this country given the right to assemble together for political purposes, but also for religious, social and even for treasonable purposes. The only restriction is that while thus assembled they must behave themselves and neither harm anybody nor disturb the peace and quiet of others. The reverse also holds good.

As the people in this state and nation are, in theory at least, the sources of all law, it of course naturally follows



that they should have the inviolable right to petition or remonstrate with those whom they themselves have invested with the powers of government, as their special servants, for the purpose of redressing any grievance they may have, or for other purposes. And so important is this right thought to be that the state legislature must receive and listen to all petitions or remonstrances made to it, although it may or may not heed the same, as it sees fit. This applies also to Congress and to county and district boards, as well as to city councils.

## SECTION 27.

### RIGHTS OF PERSONS, ETC.

No person shall be deprived of life, liberty or property without due process of law.

This section was inserted as an additional guaranty to the people in the enjoyment of their lives, their liberties and their property, by providing that none of these shall be taken away without due process of law. Its meaning is that the life of no person in this state, nor his liberty, nor his property, shall be taken away except by a course of legal proceedings according to the established Constitution and laws of this state and the Constitution and Laws of the United States relative to the enforcement of private rights, which course of legal proceedings is appropriate to the case and adapted to the end to be attained. Thus, if one is arrested and charged with the commission of a felony, he is entitled to have a preliminary examination as to his probable guilt before he can be held to answer for same. If after such preliminary examination there seems to be probable cause for believing him guilty, and he is held to answer to the district court, he will be entitled to counsel, to

meet the witnesses of the state face to face, to have a trial by an impartial jury, etc. This would be according to "due process of law," or, to borrow from Lord Coke, according to "the law of the land," which he tells us is a phrase equivalent to "due process of law." But due process of law in times of war is very different from what it is time of peace, for at such times the course of proceedings prescribed by martial or military law is considered such.

## SECTION 28.

### SLAVERY.

There shall never be in this state either slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted.

The provision in this section relative to slavery and involuntary servitude was needlessly inserted in our Constitution for the reason that the Thirteenth Amendment to the Constitution of the United States prohibits the same everywhere in this Union.

The sole exception herein contained to the prohibition of slavery and involuntary servitude is one universally recognized. This is because a person duly convicted of crime has lost for a time at least his right of liberty and the pursuit of happiness, and this for the reason that the safety of society requires that such be the case.

## SECTION 29.

### RULE OF CONSTRUCTION.

The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

This section simply lays down a rule for the construction of the Constitution, by declaring that its provisions shall

be considered mandatory or prohibitory, unless they are expressly declared otherwise,—mandatory if they say that something shall be done, prohibitory if they say that it shall not be.

## SECTION 30.

### RIGHTS RETAINED BY THE PEOPLE.

The enumeration in this Constitution of certain rights shall not be construed to deny, impair or disparage others retained by the people.

It is of course impossible to fully enumerate all the personal rights of the people which the constituted authority might be prone to trample on. Hence, to guard against the possible inference that such rights as are not expressly enumerated might be violated, this section was inserted.

## SECTION 31.

### SUPPRESSION OF DOMESTIC VIOLENCE.

No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace or the suppression of domestic violence, except upon the application of the legislative assembly or of the governor when the legislative assembly cannot be convened.

The object of this section is to guard against the national government accepting every little act of domestic violence as a pretext for meddling with Montana's right to govern herself locally, and thus gradually become a menace to state rights. But it would seem, in view of Article IV., section 4 of the United States Constitution, that its insertion was entirely unnecessary.

## ARTICLE IV.

## DISTRIBUTION OF POWERS.

The powers of the government of this state are divided into three distinct departments: the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this Constitution expressly directed or permitted.

The government of this state is divided into three departments, the same as that of the United States, and for the same reason—the distribution of the powers of government in such a manner as to render their usurpation or abuse almost if not quite impossible.

Of these three departments, the legislative is by far the most important, because it makes the laws which are enforced by the executive department and which are interpreted and applied by the judicial; and because, too, to a considerable extent, the powers they enjoy are conferred upon them by it. It is of this department that we will now study.

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ARTICLE V.

## LEGISLATIVE DEPARTMENT.

## SECTION I.

## IN WHOM THE LEGISLATIVE POWER IS VESTED.

The legislative power shall be vested in a Senate and House of Representatives, which shall be designated “the Legislative Assembly of the State of Montana.”



Like the legislative branch of the national government and those of all other states of this Union, that of our own peerless state is divided into two houses—the upper one called the Senate, and the lower one called the House of Representatives. There are many reasons for this, but chief among them is the following: The prevention of the passage to a much greater extent than can now be the case of hasty and inconsidered legislation.

“The Legislative Assembly of the State of Montana,” created by this section, has the power to pass all laws not forbidden by the state or national Constitutions, and therein the power to repeal or amend all laws already passed. This is very different from the powers of Congress in this respect, for it can pass only such laws as are enumerated in the United States Constitution, or which can be implied from these.

## SECTION 2.

### TERM OF OFFICE OF SENATORS AND REPRESENTATIVES.

Senators shall be elected for the term of four years, and Representatives for the term of two years, except as otherwise provided in this Constitution.

The members of the upper house of our Legislative Assembly are called Senators, while those of the lower house are called Representatives. The reason for making the term of office of Senators longer than that of Representatives was to render them more independent of their constituents, and therefore more conservative, while the reason for making the term of office of Representatives two years, and not one or more than two, was to give them a sufficient time to attempt to enact all necessary and needful legislation, and at the same time not be able to accomplish any great harm before the people could elect another House and through it right matters again.

The exception to the four-year term of Senators is that one-half of those elected to the first Legislative Assembly shall hold office one year and the balance three years, but at the present time this is of no importance. All Senators now hold office four years and all Representatives two years, unless they resign or become disqualified.

### SECTION 3.

#### QUALIFICATIONS OF ASSEMBLYMEN.

No person shall be a Representative who shall not have attained the age of twenty-one years, or a Senator who shall not have attained the age of twenty-four years, and who shall not be a citizen of the United States, and who shall not (for at least twelve months next preceding his election) have resided within the county or district in which he shall be elected.

Under this section no person can be a state Representative unless he is twenty-one years of age, or a state Senator unless he is twenty-four, or neither unless he is a citizen of the United States and a resident for at least one year next preceding his election of the district or county from which he shall be chosen. The object of this is to make all persons elected to the Legislative Assembly familiar with the institutions of our state and nation, and with the requirements and wishes of the district or county he is chosen to represent. Senators are required to be of a greater age than Representatives before they can qualify, for the reason that the greater dignity of their office would suggest that such be the case.

### SECTION 4.

#### NUMBER OF MEMBERS.

The Legislative Assembly of this state, until otherwise provided by law, shall consist of sixteen members of the Senate, and fifty-five members of the House of Representatives.

It shall be the duty of the first Legislative Assembly to divide the state into Senatorial and Representative districts, but there shall be no more than one Senator from each county. The Senators shall be divided into two classes. Those elected from odd-numbered districts shall constitute one class, and those elected from even-numbered districts shall constitute the other class; and when any additional Senator shall be provided for by law his class shall be determined by lot.

One-half of the Senators elected to the first Legislative Assembly shall hold office for one year, and the other half for three years; and it shall be determined by lot immediately after the organization of the Senate, whether the Senators from the odd or even numbered districts shall hold for one or three years.

At the present time the state Senate consists of twenty-four members and the state House of Representatives of sixty members. The Legislative Assembly which will meet in January, 1903, however, will consist of twenty-six Senators and sixty-seven Representatives.

It will be noticed from the foregoing section that only a portion of the Senators go out of office on the first Wednesday after the first Monday of November in every even-numbered year, the remainder holding office until the first Wednesday after the first Monday of November in the next succeeding even-numbered year, and so on. The purpose of this is to at all times have at least a few experienced legislators in our legislative halls, and to give the Senate added dignity, free it to a certain extent from the influence of hasty and inconsidered public opinion, and make it more conservative than it perhaps would otherwise be.

It will also be noticed that the ratio which the whole number of Representatives shall bear to the whole number of Senators, except so far as the first Legislative Assembly was concerned, in which the proportion was fixed at about three and one-half to one, is left entirely undetermined by this section, and in fact by the entire Constitution. Hence, the Legislative Assembly can increase or decrease the num-

ber of Representatives to any number it pleases so long as it keeps within reasonable bounds. The proportion is now about two and one-half to one in favor of the House of Representatives.

As the law is at present, each county now in existence and each new county that may hereafter be created shall be entitled to no less and no more than one Senator; and such new county is also entitled to at least one Representative until otherwise provided by law.

## SECTION 5.

### COMPENSATION OF MEMBERS.

Each member of the first Legislative Assembly shall receive as a compensation for his services six dollars for each day's attendance, and twenty cents for each mile necessarily traveled in going to and returning from the seat of government to his residence by the usually traveled route, and shall receive no other compensation, perquisite or allowance whatsoever.

No session of the Legislative Assembly, after the first, which may be ninety days, shall exceed sixty days.

After the first session the compensation of the members of the Legislative Assembly shall be as provided by law; *provided*, that no Legislative Assembly shall fix its own compensation.

The compensation fixed by law for members of the Legislative Assembly at this time is the same as that fixed by the Constitution for the members of the first Legislative Assembly—six dollars per day and twenty cents per mile in going from and returning to their places of residence from the seat of government. But no Legislative Assembly can fix the compensation of its own members, but it may either increase or diminish the compensation of the members of its successor. This was so provided to guard against the possibility of the members of any legislature appropriating or voting to themselves extravagant salaries.

Under this section no Legislative Assembly at the present time can be in session more than sixty days, though it may be for a less period than sixty days. The purpose



of this is to prevent the accruing against the state of the enormous expense that would naturally result from a longer session of the legislature, and yet afford sufficient time to pass such laws as the welfare and happiness of the people demand.

## SECTION 6.

### SESSIONS OF THE LEGISLATIVE ASSEMBLY.

The Legislative Assembly (except the first) shall meet at the seat of government at twelve o'clock, noon, on the first Monday in January, next succeeding the general election provided by law, and at twelve o'clock, noon, on the first Monday of January, of each alternate year thereafter, and at other times when convened by the Governor.

The term of service of members thereof shall begin the next day after their election, until otherwise provided by law; *provided*, that the first Legislative Assembly shall meet at the seat of government upon the proclamation of the Governor, after the admission of the state into the Union, upon a day to be named in said proclamation, and which shall not be more than fifteen nor less than ten days after the admission of the state into the Union.

The Legislative Assembly of this state *must* now meet on the first Monday of January, at high noon, in each odd-numbered year, and *may* be convened at such other times as the Governor might think necessary. This latter is brought about by the Governor issuing a proclamation calling the members of the legislature together in what is called "special session," to distinguish it from the regular session which must meet biennially as provided in this Constitution. But the Governor can only issue such proclamation on extraordinary occasions, and the reason or reasons for which the legislature is convened in special session must be clearly stated therein.

The term of service of all Senators and Representatives commences on the next day after their election; that is, on the first Wednesday after the first Monday of November in each even-numbered year. This may be changed whenever the legislature sees fit to do so, but as yet it has never exercised the power reposed in it in this respect.

## SECTION 7.

## RESTRICTIONS ON MEMBERS.

No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of Congress or other person holding an office (except notary public, or in the militia) under the United States or this state, shall be a member of either house during his continuance in office.

This section has two objects. The first of these is to keep the legislators free from the influence of the executive branch of the government by declaring that none of them shall be appointed to a civil office under this state during their respective terms, and thus give effect to the reason for dividing the powers of government into three branches. The second of these is to render the members of the Legislative Assembly entirely independent of the influence of the general government, and thus keep them ever on the alert against the encroachments of federal power.

In other words, no person under this section can be a member of the Legislative Assembly of Montana, and hold any other office, state or national, at the same time, except that of notary public or an appointment in the state militia.

## SECTION 8.

## INCREASE OF SALARY.

No member of either house shall, during the term for which he shall have been elected, receive any increase of salary or mileage under any law passed during such term.

For fear that section 5 of this Article might be construed to mean that although members of the Legislative Assembly could not fix their own salaries, yet that they would

have the power to increase the same thereunder, the foregoing section was inserted. The reason for it is the same as that for such part of section 5, as relates to the determining of salaries of members by their own votes.

## SECTION 9.

### OFFICERS AND ELECTIONS.

The Senate shall, at the beginning and close of each regular session, and at such other times as may be necessary, elect one of its members president pro tempore. The House of Representatives shall elect one of its members speaker. Each house shall choose its other officers, and shall judge of the elections, returns and qualifications of its own members.

- The officers of the Senate are the President, who is the presiding officer, the President pro tempore, who presides over the Senate when the President is absent or has resigned or is disqualified or is acting as Governor, a Secretary, an Assistant Secretary, a Journal Clerk, a Sergeant-at-arms and as many assistants and minor officers as may be required. Those of the House are the same as those of the Senate, the only difference being that the presiding officer is called the Speaker, instead of the President; the one who presides when the Speaker is absent or disqualified, the Speaker pro tempore, instead of the President pro tempore; the officer performing for the House the same duties as the Secretary of the Senate performs, the Chief Clerk; and the one which corresponds with the Assistant Secretary of the Senate, the Assistant Chief Clerk. These officers are all chosen by their respective houses, except the President of the Senate, who is the Lieutenant Governor and is elected by the people. And with the ex-

ception of the President pro tem. of the Senate, who must be a member thereof, and the Speaker and Speaker pro tem. of the House of Representatives, who must also be members thereof, the officers of neither house can be members of the Legislative Assembly.

And in addition to giving each house the power to elect or appoint its own officers, except as heretofore stated, this section also confers upon each one the power to judge of the elections, returns and qualifications of its own members. In other words, each house is given the power to determine absolutely who are and who are not entitled to membership in it, and its decision in this respect is final and cannot be inquired into by any court, as is the case with state and county officers. This right of our legislative body to judge of the elections, returns and qualifications of its own members is very important, and has long been recognized in free countries as necessarily belonging to a legislative body, in order that it may be in a position to maintain its purity and independence.

## SECTION 10.

### QUORUM.

A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalties as each house may prescribe.

A *quorum* is a sufficient number to do business, and under this section such number is declared to be a majority of each house. The reason for such provision is very obvious when we remember that one of the chief principles of this government is that the majority rules. If a greater number were required to constitute a quorum, then the minority in many instances would be in a position to pre-



vent or at least delay legislation; if a less number were required to constitute a quorum, then would an active minority be given too much power. But in order to guard against the possibility of a majority of the members of either house staying away, either through carelessness or intentionally, and thus effectually block the wheels of legislation, the further provision that a minority may meet and adjourn from day to day, so as to keep up the organization, and may compel the attendance of absent members under such penalties and in such manner as each house has previously provided, was inserted. This is done through the Sergeant-at-arms of each house, or in his absence through any other person whom it may appoint for that purpose. The penalty imposed upon absentees whose attendance is thus enforced, unless they are excused by the house to which they belong, is that they shall not be entitled to any per diem during their absence and are liable for the expenses incurred in thus procuring their attendance.

## SECTION II.

### POWER TO PRESCRIBE RULES AND ENFORCE ORDER.

Each house shall have the power to determine the rules of its proceedings, and punish its members or other persons for contempt or disorderly behavior in its presence; to protect its members against violence or offers of bribe or private solicitation, and with the concurrence of two-thirds, to expel a member, and shall have all other powers necessary for the Legislative Assembly of a free state.

A member expelled for corruption shall not thereafter be eligible to either house of the Legislative Assembly; and punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense.

In order that the transaction of business might be expedited to as great an extent as possible, it is necessary for each house of the Legislative Assembly to have certain

rules prescribing the manner in which all proceedings and matters that might come before it shall be acted upon and disposed of. And as such rules regulate the proceedings of each house, it properly follows that it should have the power to make its own rules and to alter, change or amend them at any time. Therefore, each house is given the power by this section to determine the rules of its own proceedings. The rules of the Legislative Assembly of Montana, as are those of the Congress of the United States, as well as of the legislatures of the several states and the legislative bodies of most nations, are fashioned after the rules which gradually grew up in the practice of the parliament of Great Britain, only such changes and departures being made therein as the circumstances demand. These rules are called parliamentary rules, and many of them are those which are adopted and used by societies and corporations of all sorts, as well as by all meetings of a public nature.

And since each house of the Legislative Assembly has the power to determine the rules of its own proceedings, it necessarily follows that it should also have the power to enforce them and to punish all who disobey them. Therefore, each house, by virtue of this section, in addition to having the power to prescribe such rules, has also the power to punish all persons who violate them either by disturbing the proceedings or by committing what is called "contempt," and this whether such persons are members of the Legislative Assembly or not. The power of the legislature to punish for contempt is inherent in it, and bears a striking resemblance to the power of the courts to do likewise. Thus, if one attempts to bribe a member of either house, or to coerce him by threats or otherwise into supporting or opposing any measure before the Assembly, he would be guilty of contempt, and liable to punishment

by the house for such. So is one who has been properly summoned to testify before a committee of the Assembly, but who refuses to do so, and this whether his testimony would criminate him or render him infamous or not, etc. But no testimony or document which a witness is compelled to give or produce before a legislative committee can ever be used in any criminal prosecution against him. Contempt or disorderly behavior are punishable by reprimand, by fine or imprisonment, or both, and in some cases where members are the offenders, by expulsion.

That each house may at all times retain its dignity and command the respect of the people, it is also given the power by this section to expel those of its members who are not respectable or who are unworthy. But in order that this power might not be abused for partisan purposes, the further provision that members of neither house shall be expelled except upon the concurrence of two-thirds of the members thereof was inserted. No member, however, who has been expelled for bribery or some other like offense can ever thereafter be a member of either house of the Legislative Assembly, but those expelled for other reasons, if otherwise qualified, may. No punishment for contempt or disorderly behavior by either house of the legislature is a bar to a criminal prosecution brought in the regular courts for the same offense.

## SECTION 12.

### RECORDS OF PROCEEDINGS

Each house shall keep a journal of its proceedings and may, in its discretion, from time to time, publish the same, except such parts as require secrecy, and the ayes and noes on any question, shall at the request of any two members be entered on the journal.

Each house is compelled to keep a journal of its proceedings in order to afford a convenient and reliable means

of determining what business it has transacted and what bills and what resolutions or memorials it has passed. The contents of these journals may from time to time, in the discretion of each house, be published for the information of the people, except such parts thereof as the public welfare demands shall be kept secret.

There are three ways of voting on matters before each House of the Assembly, as follows: By acclamation, by rising vote and by the "ayes and noes." The first way is usually first resorted to and the general result determined by the presiding officer and entered on the journal. If the presiding officer is unable to determine how the measure went by means of the first way; however, he usually resorts to the second, in which event all members in favor of the measure first rise and are counted, after which all members opposed rise and are counted, and the general result entered on the journal. But at times it becomes advisable to have the manner in which each member voted, as well as the general result, preserved in the journal of his House, and thus make him careful how he casts his ballot, for he knows that the entire state, and his constituents especially, will find out how he voted when the journals are published, and often much sooner through the medium of the press. This result is brought about by the "aye and no" vote, which must be resorted to in either house if two members thereof request that such be the case.

## SECTION 13.

### PUBLICITY OF PROCEEDINGS

The sessions of each house and of the committees of the whole shall be open unless the business is such as requires secrecy.

Under this section all sessions of both houses of the Legislative Assembly, and also all sessions of the Legisla-



tive Assembly when it resolves itself into a committee of the whole, except when the public welfare demands that its proceedings be kept secret, shall at all times be open to the people. Any and all persons who choose to do so, if they behave themselves and are not infected with contagion, may attend such sessions and listen to and watch all the debates and other proceedings, and in addition the press may publish and scatter broadcast throughout the state and elsewhere reports of all that was said or done. In this manner the people at all times are enabled to keep a close watch on the actions and doings of their representatives, and the representatives themselves made to feel that they are in very truth the servants of the people.

But in times of war or insurrection, and perhaps in several other cases, it may be extremely inimical to the public safety that the proceedings of either house be made known to the people. Under such circumstances it may if it sees fit sit "behind closed doors," and refuse to at any time publish its proceedings. It is very seldom that the House of Representatives does this, but the Senate in the transaction of its executive business often sits behind closed doors, in which case it is said to be in "executive session."

## SECTION 14.

### ADJOURNMENT.

Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

This section is patterned after Article I., Section 5, Clause 4, of the United States Constitution, and was inserted to accomplish the same end—the expedition of business. If it were otherwise, each house, by adjourning any length of time it pleased, or to another place, might effectually stop, or at least hinder, legislation.

## SECTION 15.

## PRIVILEGES OF LEGISLATORS.

The members of the Legislative Assembly shall, in all cases, except treason, felony, violation of their oath of office and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

The purpose of that part of this section relative to freedom from arrest of members during their attendance at the sessions of the Legislative Assembly, and in going to and returning from the same, is to enable the constituents of legislators not to be deprived of their voices and votes in the legislative halls for petty or frivolous reasons. But it is not necessary that members be sworn in before they are entitled to this privilege. If this were otherwise, some evil-minded person might cause their arrest as they were departing for the seat of government, and thus deprive the constituents of such members, for a time at least, of their proper and rightful representation.

The purpose of the provision relative to freedom of speech and of debate was inserted, not for the purpose of shielding cowards, but for the purpose of encouraging well-meaning members in exposing fraud and iniquity, by providing that they shall not be held to answer in damages or otherwise before a court of justice for anything they might say while in the performance of their official duties.

## SECTION 16.

## POWER OF IMPEACHMENT.

The sole power of impeachment shall vest in the House of Representatives; the concurrence of a majority of all the members being necessary to the exercise thereof. Impeachment shall be tried by the Senate sitting for that purpose, and the Senators shall be upon oath or affirmation to do justice according to law and evidence. When the Governor or Lieutenant Governor is on trial, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without a concurrence of two-thirds of the Senators elected.

It at times becomes necessary to remove a civil officer, i. e., one holding an office or appointment under the executive or judicial branches of the government of this state, because of misconduct, neglect, bribery, etc., from the position to which he was elected or appointed. To do this, with reference to the removal of all state and judicial officers, except justices of the peace, is called impeachment, and the manner of impeaching a state or judicial officer is as follows: The lower house of the Montana Legislative Assembly, by a majority vote, prefers a written charge against the officer it wishes to have removed, which it sends to the Senate, with instructions that the Senate try the same. The Senate then causes a summons to be served on such officer requiring him to appear before it on a certain day and make answer to the charges preferred against him; whereupon the Senate resolves itself into a Court of Impeachment to try the charge. In conducting this trial, the House of Representatives, through certain members appointed for that purpose, acts in the capacity of prosecuting attorney, the defendant being also permitted to appear by attorney, and the Senate acts in the capacity of both judge and jury. If after all the evidence has been heard for and against the accused, and the arguments of counsel made, the Senate, by the concurrence of two-thirds of the whole number of Senators elected, votes to remove such officer, he must straightway be removed and his posi-

tion declared vacant; but if at least two-thirds of the entire number of Senators elected do not concur in removing him, then he must be permitted to enjoy his office for the remainder of the term for which he was elected or appointed. The reason for requiring the concurrence of two-thirds of the Senators elected to remove a civil officer from office is to guard against the abuse of the power of impeachment for partisan purposes.

The members of the Senate, when it is sitting as a Court of Impeachment, must be on oath or affirmation to judge the accused according to the law and the facts, in order that their sense of responsibility may be increased; and when the Governor or Lieutenant Governor is to be tried for impeachment, the Chief Justice of the Supreme Court must preside over the Senate. This latter is because, as the Lieutenant Governor is the presiding officer of the Senate, and is the only one who would benefit by the removal of the Governor, it would be manifestly unjust and a bid to fraud to allow him to preside over the Senate during the progress of an impeachment trial against himself or against the Governor.

Thus far no impeachment trial has ever taken place before the Senate of Montana.

## SECTION 17.

### WHO ARE LIABLE TO IMPEACHMENT.

The Governor and other state and judicial officers, except justices of the peace, shall be liable to impeachment for high crimes and misdemeanors, or malfeasance in office, but judgment in such cases shall only extend to removal from office and disqualification to hold any office of profit, trust or honor under the laws of this state. The party, whether acquitted or convicted, shall, nevertheless, be liable to prosecution, trial, judgment and punishment according to law.

This section simply repeats in effect what we said in commenting upon the last section,—that all state and judicial



officers, except justices of the peace, are subject to impeachment for bribery, malfeasance in office, etc. But all officers not liable to impeachment under this section, as we shall learn in considering the next succeeding one, may also be removed from office, though in a different manner.

The fact that an officer has been tried by the Senate for an impeachable offense does not, however, bar his being tried and convicted in the regular courts for the same offense and punished according to law, and this whether he was removed from office by the Senate or not.

## SECTION 18.

### REMOVAL OF OTHER OFFICERS.

All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law.

We have seen that only state and judicial officers, with the exception of justices of the peace, can be impeached and removed, or removed and disqualified. But all other civil officers, such as district, county, township and municipal officers, as well as justices of the peace, though they cannot be impeached, yet may be removed from office for misconduct or malfeasance in the manner following: The grand jury of the county in which such officer is elected or appointed prefers a written accusation against him, stating in ordinary and concise language the offense with which he is charged. This accusation must be delivered by the foreman of the grand jury to the county attorney, unless he is the officer accused, who must forthwith cause a copy thereof to be served on the defendant, together with a written notice that he must appear before the District Court of such county in not less than ten days and answer the same, and then file the original accusation with the clerk

of the District Court. The defendant may then appear and answer the charge by denying the same, by objecting to its sufficiency, or by pleading guilty, or he may fail entirely to appear within the allotted time. If the latter is the case, the court may hear and determine the accusation in his absence. If he pleads guilty, however, judgment of conviction must be rendered against him, but if he denies the charge or appears and refuses to answer the accusation, then he must be tried by jury, which trial must be conducted in all respects similar to a criminal prosecution for a misdemeanor, the concurrence of two-thirds of the entire jury being necessary to convict. If in any case the officer is convicted, he must be straightway removed from office; but such conviction is no bar to his being subsequently elected or appointed to some other office under this state; neither is it a bar to a criminal prosecution instituted in the regular courts for the same offense.

When the county attorney is the person accused, the proceedings are the same as in other cases, except that the accusation is delivered to the clerk of the District Court directly by the foreman of the grand jury, and by him to the judge of the District Court of such county, who must cause the required copy and notice to be served on the county attorney, and appoint some one to act as prosecuting officer in the matter.

## SECTION 19.

### HOW LAWS SHALL BE ENACTED.

No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

The Legislative Assembly of Montana can pass no law except by bill. This is different from the Congress of the United States, which has the power to pass laws either by

bill or by joint resolution (United States Constitution, Article I., section 7, clause 3), but in either case such bill or joint resolution, if it has the effect of law, must receive the President's signature or passive approbation or be passed over his veto before it can become law. The Legislative Assembly may, however, pass joint resolutions proposing an amendment to the Constitution, or addressing a memorial to Congress, etc., as these do not have the effect of law, though they must be presented to the Governor, as in case of a bill. Either house, too, may pass any resolution it desires, if such resolution merely expresses an opinion or prescribes rules for its own self-government. But resolutions of this character do not require the Governor's signature. (See section 40, this Article.)

Neither can either house of the Legislative Assembly so alter or amend a bill on its passage through it as to change its original purpose. If any alteration or amendment is made, it must be in entire harmony with the original purpose of the bill. This is to prevent confusion and delay.

## SECTION 20.

### STYLE OF ALL LAWS.

The enacting clause of every law shall be as follows: "Be it enacted by the Legislative Assembly of the State of Montana."

The above section was inserted in order that uniformity in the form of the enacting clauses of all laws might be attained. It is of no special significance, and hence needs no further comment.

## SECTION 21.

## WHEN BILLS SHOULD BE INTRODUCED.

No bill for the appropriation of money, except for the expenses of government, shall be introduced within ten days of the close of the session, except by unanimous consent of the house in which it is sought to be introduced.

The object of this section is to prevent an abuse very common in Congress and in the legislatures of many states, of reserving private and local appropriation bills, many of which are unworthy, to the last minute and then rushing them through with a whoop, thereby preventing their receiving due consideration.

## SECTION 22.

## BILLS REQUIRED TO BE PRINTED, ETC.

No bill shall be considered or become a law unless referred to a committee, returned therefrom and printed for the use of the members.

In order to facilitate the passage of needed legislation and also to prevent the passage of that which is hasty or rash, as well as for other purposes, it is almost the universal rule of legislative bodies to divide themselves into committees, each committee having supervision over a certain class of laws, to which proposed legislation is referred for consideration. Thus, in Montana, each house of the Legislative Assembly has a committee on judiciary, to which all bills relating to the procedure of the courts and other judicial matters are referred; a committee on mines and mining, to which proposed mining legislation is referred; a committee on private corporations, to which bills



relative to their management, control or formation are referred, and so on. These committees, after examining the proposed bills submitted to them for consideration, report each to their respective houses recommending that the same be either passed or killed, and at the same time giving their reasons for such recommendations. Neither house is bound by these recommendations, but as they are generally common-sense deductions, it very seldom fails to follow them. Hence, the wisdom of the provision that no law shall be passed, or even considered by either house, unless it was first referred to a committee.

The object of requiring that all bills returned from the committees shall be printed for the use of the members of the Legislative Assembly is to make them all familiar therewith, and to enable them to give the merits or demerits of such bills sufficient consideration, thus guarding against unconsidered legislation.

## SECTION 23.

### SUBJECT OF BILL SHALL BE EXPRESSED IN THE TITLE.

No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

This section is designed to prevent the passage of a vicious or objectionable measure under a title which does not call attention to the main object of the bill. Also, to prevent the slipping through of some private or local bill in connection with a worthy measure and on its merits, as well as to prevent the combining of several local or private schemes in one bill, for the purpose of thereby commanding the votes of such members to all of them who would otherwise support only one or part of them.

## SECTION 24.

## MAJORITY VOTE.

No bill shall become a law except by a vote of a majority of all the members present in each house, nor unless on its final passage, the vote be taken by ayes and noes, and the names of those voting be entered on the journal.

No bill can become a law in this state unless it receives the support of not less than a majority of the members of each house actually *present*, nor even then if on its final passage the vote is not by "ayes and noes" and the manner in which each member present voted entered on the journal. This is in harmony with the theory that "the majority rules," and is designed to make legislators exceedingly careful of how they vote.

## SECTION 25.

## MANNER OF AMENDMENT.

No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be re-enacted and published at length.

This is to prevent confusion or mistake in the revision, amendment or extension of the laws. Under it no law can be revised, amended or extended, unless so much thereof as may be affected by such revision, amendment or extension is re-enacted and published in entirety.

## SECTION 26.

## LOCAL OR SPECIAL LAWS FORBIDDEN.

The Legislative Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: For granting divorces; laying out, opening, altering or working roads or highways; vacating roads, town plats, streets, alleys or public grounds; locating or changing county seats; regulating county or township affairs; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates or constables; changing the rules of evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions, or giving effect to informal or invalid deeds; summoning or impaneling grand or petit juries; providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; chartering or licensing ferries or bridges or toll roads; chartering banks, insurance companies and loan and trust companies; remitting fines, penalties or forfeitures; creating, increasing or decreasing fees, percentages or allowances of public officers; changing the law of descent; granting to any corporation, association or individual the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever; for the punishment of crime; changing the names of persons or places; for the assessment or collection of taxes; affecting the estates of deceased persons, minors or others under legal disabilities; extending the time for the collection of taxes; refunding money paid into the state treasury, relinquishing or extinguishing in whole or in part the indebtedness, liability or obligation of any corporation or person to the state or to any municipal corporation therein; exempting property from taxation; restoring to citizenship persons convicted of infamous crimes; authorizing the creation, extension or impairing of liens; creating offices, or prescribing the powers or duties of officers in counties, cities, township or school districts; or authorizing the adoption or legitimation of children. In all other cases where a general law can be made applicable, no special law shall be enacted.

A *special law* is one which relates to or binds only one or more persons or things of a whole class or order of persons or things within the jurisdiction of the law-making power. Thus, if the Legislative Assembly of Montana should pass a law allowing a certain person to procure a divorce on different testimony or by a different mode of

procedure than is required of all other applicants for divorce in this state, such law would be *special*, and therefore void.

Experience has taught that as a general rule special legislation is followed by very dire results, for it more often takes from than adds to the welfare and happiness of a majority of the people. Then, too, the power to pass legislation special in its nature is liable to be abused in favor of the wealthy and influential and against the common people, the hope and pride of every land. Therefore, the reason for prohibiting the Legislative Assembly of Montana from passing special legislation under any circumstances with reference to the cases enumerated in this section, and in all other cases not specifically enumerated where a general law, i. e., one relating to or binding all within the jurisdiction of the law-making power, can be made applicable is doubly apparent.

## SECTION 27.

### DUTY OF PRESIDING OFFICERS.

The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the Legislative Assembly immediately after their titles have been publicly read, and the fact of signing shall be at once entered upon the journal.

This simply means that when a bill has passed either house the presiding officer thereof must sign the same in its presence, and the fact of his doing so must be entered upon the journal. The purpose of this requirement is to guard against mistake or fraud, the signature of the presiding officer, coupled with the fact that he did sign it as entered upon the journal, being in effect a certificate that the bill is genuine and did actually pass the house over which he presides.



## SECTION 28.

## DUTIES, ETC., OF OTHER OFFICERS.

The Legislative Assembly shall prescribe by law the number, duties and compensation of the officers and employes of each house; and no payment shall be made from the state treasury, or be in any way authorized to any such person, except to an acting officer or employe elected or appointed according to law.

The officers of both houses are enumerated in connection with section 9 of this Article, and hence need not be again given here. Their duties are such as their titles would indicate, and their compensation ranges all the way from four dollars to ten dollars per day, during the sessions of their respective houses.

## SECTION 29.

## NO EXTRA COMPENSATION OF OFFICERS, ETC., ALLOWED.

No bill shall be passed giving any extra compensation to any public officer, servant or employe, agent or contractor, after services shall have been rendered or contract made, nor providing for the payment of any claim made against the state without previous authority of law, except as may be otherwise provided herein.

The object of this is to make public officers, contractors and others entirely independent of the Legislative Assembly, and to prevent fraud, by declaring that no bill shall be passed directing the payment of a claim out of the state treasury, except in certain cases, unless such claim was previously authorized to be incurred by law, and then only to the extent of the original agreement. Since such officers, etc., have now nothing to hope for in the way of an increase of salary or compensation, it naturally follows that they will be the more likely to render satisfactory services.

## SECTION 30.

## STATE PRINTING, ETC.

All stationery, printing, paper, fuel and lights used in the legislative and other departments of the government, shall be furnished, and the printing and binding and distribution of the laws, journals and department reports and other printing and binding, and the repairing and furnishing of all halls and rooms used for the meeting of the Legislative Assembly, and its committees, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price and under such regulations as may be prescribed by law. No member or officer of any department of the government shall be in any way interested in any such contract; and all such contracts shall be subject to the approval of the Governor and State Treasurer.

The purpose of this is to prevent frauds being perpetrated on or exorbitant charges being made the state in the matter of the furnishing of its stationery, fuel, printing, lights, rents, etc. Under this section contracts for any of these purposes cannot be given as a reward for political services by the party in power, but must be given to such responsible person as will do or furnish what is required the cheapest, providing his bid is below the maximum price fixed by the Legislative Assembly. If it is above such maximum price, then his bid cannot be accepted even if it is the lowest, and a new call for bids must be made. This is designed to prevent a conspiracy to keep up the prices.

Neither can any such contract be made with a firm, partnership or corporation in which any member or officer of any of the departments of our state government is interested, or with such member or officer personally. This is to prevent such contracts from being surrounded with suspicion, and also to remove any incentive for corruption and fraud from the officers of the state and the representatives of the people, by holding out to them the hope of no other remuneration for their services than that specifically prescribed by law.

## SECTION 31.

SALARIES OF PUBLIC OFFICERS CANNOT BE INCREASED OR  
DIMINISHED.

Except as otherwise provided in this Constitution, no law shall extend the term of any public officer, or increase or diminish his salary or emolument after his election or appointment; *provided*, that this shall not be construed to forbid the Legislative Assembly from fixing the salaries or emoluments of those officers first elected or appointed under this Constitution, where such salaries or emoluments are not fixed by this Constitution.

This section was also inserted for the purpose of rendering all the public officers of this state, of whatever department, entirely independent of the Legislative Assembly, by making their terms of office unextendible and by removing from them any hope of an increase or fear of a decrease of salary during their terms of office. But the Legislative Assembly may either increase or diminish the salaries of the successors of such officers, and this whether they succeed themselves or are succeeded by others. And it may also fix the salaries of all such new officers as may from time to time be elected or appointed under this Constitution, if such salaries are not fixed by it, but when such salaries are once fixed they cannot be increased or diminished during the remainder of the terms of such officers.

## SECTION 32.

## WHERE REVENUE BILLS ORIGINATE.

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose amendments, as in the case of other bills.

This means that all bills for raising money for defraying the expenses of carrying on the state government must be first introduced in the House of Representatives, on the theory that the Representatives, being nearer to the people

and representing them more directly than do the Senators who are supposed to represent the counties, will be in a better position to know for what governmental purposes money ought to be raised and yet keep the tax levy as low as possible, in order that the people who have to pay the taxes will not be over-burdened in this respect.

But after a bill raising revenue has been introduced in the House of Representatives, the Senate may, and often does, propose amendments to the same, which may or may not be adopted by the House. All bills which do not relate to raising revenue, however, may originate in either house.

## SECTION 33.

### APPROPRIATION BILLS.

The general appropriation bills shall embrace nothing but the appropriations for the ordinary expenses of the legislative, executive and judicial departments of the state, interest on the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

A general appropriation bill is one which directs the payment of money out of the state treasury for the purpose of satisfying a large number of diversified claims against the state. This class of bills, experience has demonstrated, are apt to have a number of private or local appropriation schemes attached to them, unworthy in themselves and unable to be otherwise passed, which go through on the merits of the main features of the bill or slip through entirely unnoticed. Hence, in order to prevent such practices in this state, the foregoing section was inserted. Under it no appropriation which is not strictly general in its nature can be included in the general appropriation bill. All others must be made by separate and distinct bills, each embracing but one subject.



## SECTION 34.

## PAYMENT OF MONEY OUT OF TREASURY.

No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt.

Before any money can be paid out of the state treasury, with the exception of interest on the public debt, two things are necessary. The first of these is, that the Legislative Assembly must by bill authorize the payment of such money to the party having the claim; and second, after such authorization is made, such party must procure a warrant upon the State Treasurer from the proper officer, requiring him to pay over the amount appropriated. This was so provided in order to prevent the conducting of the people's money by corrupt officials and others into channels for the reception of which it was never meant—in other words, in order to prevent the plundering of the state treasury by political henchmen and unscrupulous politicians for their own personal gain. Interest on the public debt is excepted for the reason that it can be easily and accurately calculated, and the State Treasurer or his bondsmen held responsible for an over-payment thereof.

## SECTION 35.

## APPROPRIATIONS TO CORPORATIONS, ETC.

No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation, or community not under the absolute control of the state, nor to any denominational or sectarian institution or association.

This, so far as it relates to the appropriation of money for charitable, industrial, educational or benevolent purposes, was inserted to accomplish the same end as the last

preceding section—the guarding against the squandering of the people's money by either diverting it, or a part thereof, wholly or partially from the purpose for which it was originally appropriated or intended.

In so far as it relates to denominational or sectarian institutions or associations, the Legislative Assembly is forbidden absolutely to appropriate any money to their use or benefit. The object of this is to guard against that worst, most bigoted and most narrow-minded jealousy known to man—sectarian or denominational jealousy.

## SECTION 36.

### DELEGATION OF POWERS.

The Legislative Assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvements, money, property or effects, whether held in trust or otherwise, or to levy taxes, or to perform any municipal functions whatever.

An evil more or less common in many foreign nations is the delegation to private corporations or associations of powers which properly belong to and had ought to be exercised by the government itself, thereby in many instances infringing greatly upon the liberties of the people. Hence, in order to guard against anything of this sort, the foregoing section was inserted.

## SECTION 37.

### INVESTMENT OF TRUST FUNDS.

No act of the Legislative Assembly shall authorize the investment of trust funds by executors, administrators, guardians or trustees in the bonds or stock of any private corporation.

Executors, administrators, guardians and trustees are those who hold and manage property in trust for the heirs of deceased persons until a proper distribution can be made

among them by the court, or the property of minors or others legally disqualified to act for themselves, etc. They are generally considered as officers of the court, and among other powers possessed by them, they have the power, subject to the approval of the court in certain cases, to invest the money in their possession and belonging to those for whom they legally act. But owing to the great uncertainty of the outcome of investments in the bonds or stocks or many private corporations or associations, this section which provides that no law shall be passed authorizing the investment of trust funds in such stocks or bonds was inserted. Therefore, as the law now stands, if a trustee or other person holding a similar capacity invests the money or property of his *cestui que trust* in bonds or stocks of a private corporation or association and a loss is thereby occasioned, he will be held personally responsible therefor.

## SECTION 38.

### STATE OR MUNICIPAL AID IN RAILROAD CONSTRUCTION.

The Legislative Assembly shall have no power to pass any law authorizing the state, or any county in the state, to contract any debt or obligation in the construction of any railroad, nor give or loan its credit to or in aid of the construction of the same.

The purpose of this section is not to discourage the construction of railroads, but to protect this state and the counties thereof from loss by putting a damper on the making of investments by them in aid of some new railroad project, which experience has proven turns out in about nine cases out of ten in a dismal and utter failure.

## SECTION 39.

EXTINGUISHMENT OF OBLIGATIONS OWING TO THE STATE,  
ETC.

No obligation or liability of any person, association or corporation held or owned by the state or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released or postponed, or in any way extinguished by the Legislative Assembly; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury.

The foregoing means that the Legislative Assembly shall never, by bill or otherwise, pass any law or do any act the effect of which would be to authorize the state or any county, township, city or school district therein to either exchange a debt or obligation owing *to* it by any person, corporation or association for one owing *by* it to such person, association or corporation, or to transfer the same, or to remit or release it, or to postpone its payment to a time later than that on which it becomes due and payable, or to in any way diminish the value thereof. The introduction of this section into the Constitution is also a result of the lessons taught us by the bitter experience of some of our older sisters in this connection, and its purpose is to make the state and its municipal corporations entirely independent of their debtors by removing from such debtors all hope of ever, by bribery, threats or blandishments, extinguishing their obligations or liabilities to the state or its municipalities, or in any way diminishing their value.

The only possible way an obligation or liability due the state or one of the municipal corporations thereof can now be extinguished or canceled is by payment in full, and this whether the state or such municipality is itself indebted to the person, private corporation or association liable to it or not. But this does not mean that the state or its municipalities will never pay their obligations or liabilities. It means simply that they will do so in their own time and in their own way.



## SECTION 40.

## CONCURRENT RESOLUTIONS.

Every order, resolution or vote, in which the concurrence of both houses may be necessary, except on the question of adjournment, or relating solely to the transaction of the business of the two houses, shall be presented to the Governor, and before it shall take effect shall be approved by him, or, being disapproved, be repassed by two-thirds of both houses, as prescribed in the case of a bill.

That is, every order or resolution which requires the concurrence of both houses of the Legislative Assembly, such as a resolution proposing an amendment to the Constitution or one offering a memorial to Congress, except those relating solely to the question of adjournment or to the transaction of business in which the two houses only are interested directly, shall, after its passage, be presented to the Governor for his approval or veto, but before it can go into effect it must be either approved by him, or, being disapproved, be repassed over his veto by the concurrence of two-thirds of the members of each house actually present. A resolution or order disapproved by the Governor must be returned by him to the house in which it originated, together with the reasons for such disapproval. This is the same as in case of a bill (Article VII., Section 12), and the reason for it is to interpose a stay upon hasty resolutions or orders.

## SECTION 41.

## SOLICITATION OF BRIBERY AND BRIBERY BY LEGISLATORS.

If any person elected to either house of the Legislative Assembly shall offer or promise to give his vote or influence in favor of or against any measure or proposition pending or proposed to be introduced into the Legislative Assembly, in consideration or upon condition that any other person elected to the same Legislative Assembly will give, or will promise or assent to give, his vote or influence, in favor of or against any other measure or proposition pending or proposed to be introduced into such Legislative Assembly, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the Legislative Assembly shall give his vote or influence for or against any measure or proposition pending or proposed to be introduced in such Legislative Assembly, or offer, promise or assent so to, upon condition that any other member will give, or will promise or assent to give his vote or influence in favor of or against any other measure pending or proposed to be introduced in such Legislative Assembly, he shall be deemed guilty of bribery, and any member of the Legislative Assembly, or person elected thereto, who shall be guilty of either such offenses, shall be expelled and shall not thereafter be eligible to the Legislative Assembly, and on the conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

This section specifically defines in what the offenses of bribery and solicitation of bribery, so far as they relate to the dealings of the members of the Legislative Assembly as between themselves, shall consist. It is designed to prevent to as great an extent as possible the passage of any legislation, or the failure to pass of any proposed legislation, except upon its merits or demerits.

The punishment for bribery or solicitation of bribery by members of the Legislative Assembly, when found guilty, is expulsion and disqualification to ever again be a member thereof, and in addition, upon conviction thereof in the civil courts, imprisonment in the state penitentiary for not less than one year nor more than ten. Members of the Legislative Assembly may be convicted of bribery or solicitation of bribery in the regular courts, even if they have not been found guilty thereof and expelled by their respective houses.

## SECTION 42.

## BRIBERY BY OTHERS.

Any person who shall directly or indirectly offer, give or promise any money or thing of value, testimonial, privilege or personal advantage, to any executive or judicial officer or member of the Legislative Assembly, to influence him in the performance of any of his official or public duties shall be deemed guilty of bribery, and be punished in such manner as shall be provided by law.

The foregoing states specifically in what the offense of bribery, so far as it relates to the dealings of others with the executive, judicial or legislative officers of this state in their official or public capacity, shall consist.

One convicted of bribing any of such officers is liable to imprisonment in the state penitentiary for not less than one nor more than ten years.

## SECTION 43.

## SOLICITATION OF BRIBERY BY PUBLIC OFFICERS AND OTHERS

The offense of corrupt solicitation of members of the Legislative Assembly, or of public officers of the state, or of any municipal division thereof, and the occupation or practice of solicitation of such members or officers, to influence their official action, shall be defined by law, and shall be punishable by fine and imprisonment.

The Legislative Assembly has long since carried out the instructions given it by this section. It is now impossible for any person to corrupt or attempt to corrupt any executive, judicial or legislative officer of this state or of any of the municipalities thereof, or for them to solicit corruption, or to actually be corrupted, without committing a felony under the laws of this state.

The usual punishment for the commission of any of these offenses is imprisonment in the state penitentiary for a period ranging from one to fourteen years, though in some cases fines may be imposed instead, and in still others the person convicted, in addition to being made suffer the common penal punishment, is also forever disqualified from holding any office under this state.

## SECTION 44.

### INTEREST OF MEMBERS IN PROPOSED LEGISLATION.

A member who has a personal or private interest in any measure or bill proposed or pending before the Legislative Assembly shall disclose the fact to the house of which he is a member, and shall not vote thereon.

That is, if any member of either house of the Legislative Assembly will be personally benefited, either financially or otherwise, by the passage of a certain bill pending before it, he shall disclose that fact to his house and shall refrain from voting thereon. If he does neither of these, he is guilty of a misdemeanor. No law passed by the Legislative Assembly, however, in which any of its members were personally interested, but did not make known that fact or refrain from voting thereon, shall be void for that reason, but shall be as valid as if such had not been the case.

The reason for all this is self-evident.

## SECTION 45.

### VACANCIES.

When vacancies occur in either house the Governor or the person exercising the functions of the Governor shall issue writs of election to fill the same.

A vacancy may occur in the Legislative Assembly by death, by expulsion, by resignation, by mental or physical disability, or by the acceptance of a seat in Congress or a



civil office of this state or of the United States. When one occurs the Governor, or the Acting Governor, who may be either the Lieutenant Governor, the President *pro tem.* of the Senate or the Speaker of the House of Representatives, must by proclamation set a day for a new election to be held in the district or county where the vacancy occurred. The new member elected on that day holds office only for the unexpired term of his predecessor.

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## ARTICLE VI.

### APPORTIONMENT AND REPRESENTATION.

#### SECTION 1.

##### REPRESENTATION IN CONGRESS.

One representative in the Congress of the United States shall be elected from the state at large, the first Tuesday in October, 1889, and thereafter at such times and places, and in such manner as may be prescribed by law. When a new apportionment shall be made by Congress the Legislative Assembly shall divide the state into congressional districts accordingly.

Representatives in Congress are now elected on the first Tuesday after the first Monday in November of each even-numbered year, and the manner of doing so is by ballot. This is regulated by Congress (see United States Constitution, Article I., Section 4, Clause 1), and hence the state has no control over the matter.

Congress from time to time apportions to each state the number of representatives it shall have therein (United States Constitution, Article I., Section 2, Clause 3), but

whether the number of Congressmen each state is allowed to have shall be elected at large or by districts is a matter left entirely to its own fancy. This state has chosen to elect its Congressmen by districts, but as it is as yet allowed to have only one representative in Congress, the entire state of course constitutes but one congressional district. But should the Congress in making its next apportionment, or any apportionment subsequent thereto, authorize Montana to have more than one national representative, then it will become the duty of her Legislative Assembly to divide the state into as many congressional districts as she is allowed representatives in Congress. The only restriction on the Legislative Assembly in this respect is that it must form such districts out of compact and contiguous territory.

## SECTION 2.

### APPORTIONMENT OF STATE REPRESENTATIVES.

The Legislative Assembly shall provide by law for the enumeration of the inhabitants of the state in the year 1895 and every tenth year thereafter; and at the session next following such enumeration, and also at the session next following an enumeration made by the authority of the United States, shall revise and adjust the apportionment of representatives on the basis of such enumeration according to ratios to be fixed by law.

The process of enumerating the inhabitants of this state and of the United States is called *taking the census*. The census of the United States is taken during every year the number of which ends with zero, and the census of this state is taken during every year the number of which ends with five. Hence, under this section, the Legislative Assembly of Montana is compelled to revise and readjust the apportionment of state representatives every five years. This is different than the apportionment for Congressmen,

which is made only every ten years, but the reason for requiring that an apportionment be made thus often for state representatives is that, as the state is rapidly being developed and settled, if it was not re-apportioned thus often parts of it would not be fairly and justly represented in the lower house of the Legislative Assembly.

The seventh Legislative Assembly, which met on the first Monday of January, 1901, re-apportioned the state in such a manner as to give the eighth Legislative Assembly sixty-seven members in its lower house.

### SECTION 3.

#### REPRESENTATIVE DISTRICTS.

Representative districts may be altered from time to time as public convenience may require. When a representative district shall be composed of two or more counties, they shall be contiguous and the districts as compact as may be. No county shall be divided in the formation of a representative district.

Congress has the power to apportion to the several states the number of Representatives each shall have therein, but it has no power to define the districts from which such Representatives shall be chosen. This is different from that of the Legislative Assembly in this respect, which has the power to both apportion the number of state Representatives the lower house shall have and to define the district from which each one shall be chosen. The only restriction on the power of the Legislative Assembly in re-districting the state is that such districts, when composed of more than one county, must be made as compact as possible and out of counties contiguous and adjacent the one to the other, but no county must be divided in the formation thereof. The reason for this is to protect the people from a practice at one time common in some of the Eastern states, called "gerrymandering," of dividing the state up into districts

for Representatives, both state and national, in an unfair and unnatural way, with a view to giving the political party in power at the time such division as made an advantage over its opponent.

## SECTION 4.

### SENATORIAL DISTRICTS.

Whenever new counties are created, each of said counties shall be entitled to one Senator, but in no case shall a senatorial district consist of more than one county.

As the law now stands, each county in existence and each county which may hereafter be created shall be entitled to no more and no less than one Senator in the upper house of the Legislative Assembly. But the Legislative Assembly may at any time authorize each county to elect more than one Senator, though no Senator can represent or be elected by more than one county. This is because, as Senators are in theory supposed to represent the counties, to allow one of them to represent more than one county would be to place him in the position of the man who tried to serve two masters.

## SECTIONS 5 AND 6.

### NUMBER AND FORMATION OF SENATORIAL AND REPRESENTATIVE DISTRICTS.

These sections simply define the number of Senators and Representatives each county in existence at the time of the formation of this Constitution should have in the first Legislative Assembly, and section 5 also numbers the senatorial districts and states of what county each shall be constituted. At the present time these sections are of little or no practical value, so far as the student is concerned, and hence are omitted.



## ARTICLE VII.

## EXECUTIVE DEPARTMENT.

## SECTION I.

## OF WHAT THE EXECUTIVE DEPARTMENT SHALL CONSIST.

The Executive Department shall consist of a Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, State Auditor and Superintendent of Public Instruction, each of whom shall hold his office for four years, or until his successor is elected and qualified, beginning on the first Monday of January next succeeding his election, except that the terms of office of those who are elected at the first election, shall begin when the state shall be admitted into the Union, and shall end on the first Monday of January, A. D. 1893. The officers of the executive department, excepting the Lieutenant Governor, shall during their terms of office reside at the seat of government, where they shall keep the public records, books and papers. They shall perform such duties as are prescribed in this Constitution and by the laws of the state. The State Treasurer shall not be eligible to his office for the succeeding term.

The Executive Department of this state consists of a Governor, a Lieutenant Governor, a Secretary of State, an Attorney General, a State Treasurer, a State Auditor and a Superintendent of Public Instruction. The terms of all of these officers now begin on the first Monday of January in the year next succeeding the year the number of which is divisible by four, and continue for four years, or until their successors are elected and qualified. That is, the state executive officers who were elected on the first Tuesday after the first Monday in November, 1900, and took their seats on the first Monday of January, 1901, will hold their respective offices until the first Monday of January, 1905, unless they become deceased, or resign or are otherwise disqualified prior to that time; and they may even hold and enjoy their respective offices after such

date if their successors were not elected, or were elected but failed to qualify on or before the first Monday of January, 1905. They can do this, however, only so long as the disabilities continue. When they are removed by the election and qualification of their successors, they must at once vacate in favor of such successors.

All of the executive officers of this state must reside at the seat of government, which is at the city of Helena, except the Lieutenant Governor, and must there keep the public records, books and papers which necessarily accompany their respective offices. But although the Lieutenant Governor need not as a general rule reside at the seat of government, yet when because of the death, resignation or disqualification of his chief he is called upon to fill the Governor's office, he must take up his residence there. This is so provided for the sake of convenience, as it would manifestly be very inconvenient and unsatisfactory if the executive officers of this state resided or kept the records of their offices at different places.

Briefly speaking, the duties of the executive officers are as follows :

Of the Governor, to execute the laws of this state ;

Of the Lieutenant Governor, to preside over the Senate and to fill the office of Governor whenever, because of any reason, it becomes vacant ;

Of the Secretary of State, to keep all the records of the Legislative and Executive Departments of this state, also its Constitution and the great seal thereof, and to lay such records and all matters relating thereto before either house of the Legislative Assembly when called upon to do so ;

Of the Attorney General, to be the state's lawyer ;

Of the State Treasurer, to keep the money and accounts of the state ;

Of the State Auditor, to superintend generally the fiscal concerns of the state and to examine and audit all claims against the same ;

Of the Superintendent of Public Instruction, to superintend generally the public schools of the state.

Besides these, there are also a large number of executive officers appointed by the Governor, the titles and duties of the most important of which are, briefly, as follows :

Private secretary of the Governor, whose duty is to act in the capacity of secretary to the chief executive ;

State Land Agent, whose duty is to keep a general supervision over the public lands belonging to the state ;

State Examiner, whose duty it is to examine the books and accounts of many of the state executive and judicial officers, as well as those of the executive officers of the different counties and of public institutions, etc. ;

State Game Warden, whose duty it is to supervise generally the execution of the state game laws ;

State Inspector of Boilers, whose duty it is to have charge over the inspection of steam boilers ;

State Mine Inspector, whose duty is to supervise generally the condition of mines and underground workings ;

Adjutant-general, whose duty is to take charge of the state militia, subject to the orders of the Governor ;

State Veterinary Surgeon, whose duty is to have general charge over the condition of cattle, horses, sheep, etc.

And in addition to these there are a large number of executive boards, the titles of many of which are as follows :

State Board of Equalization ; State Board of Pardons ; State Board of Prison Commissioners ; State Board of Commissioners for the Insane ; State Board of Examiners ; State Board of Land Commissioners ; State Board of Stock Commissioners ; State Board of Medical Examiners ; State Board

of Dental Examiners; State Board of Pharmacy; State Board of Osteopathy Examiners; State Board of Charities and Reform; State Bureau of Agriculture, Labor and Industry; State Board of Education. The duties of most of these boards are indicated by their titles, so space will not be taken to enumerate them.

Although these various officers and boards all perform certain executive functions, yet the student must not lose sight of the fact that in the Governor alone is vested the supreme executive authority, all of them being to a more or less degree amenable to him and subject to his control, either directly or indirectly.

## SECTION 2.

### MANNER OF ELECTING EXECUTIVE OFFICERS.

The officers provided for in section 1 of this Article, shall be elected by the qualified electors of the state at the time and place of voting for members of the Legislative Assembly, and the persons respectively, having the highest number of votes for the office voted for shall be elected; but if two or more shall have an equal and the highest number of votes for any of said offices, the two houses of the Legislative Assembly, at its next regular session, shall forthwith by joint ballot, elect one of such persons to said office. The returns of election for the officers named in section 1 shall be made in such manner as may be prescribed by law, and all contested elections of the same, other than provided for in this section, shall be determined as may be prescribed by law.

All executive officers mentioned in the last section, to-wit, the Governor, Lieutenant Governor, Secretary of State, Attorney General, State Auditor, State Treasurer and Superintendent of Public Instruction, are elected by the qualified electors of this state; that is, by those who are given the right to vote under the laws of Montana. All other executive officers, whether members of boards or otherwise, are appointed by the Governor by and with the advice and consent of the Senate, except clerks, assistants, etc., who are generally appointed by those under whom they



immediately serve. The date on which these executive officers are elected is the same as that on which presidential electors are chosen—the first Tuesday after the first Monday in November of every year the number of which is divisible by four.

In order to be elected to any of these executive offices it is not necessary for one to receive a majority of all the votes cast for such office, but it is sufficient if he receives the highest number of votes of any of the candidates legally nominated for such office—in other words, this section provides that a plurality elects. This is the case with all elective executive, judicial, legislative, county, city, town and township officers, as well as with Representatives in the lower house of Congress. If the rule was otherwise,—that a majority only can elect,—then by multiplying the candidates for any office indefinitely it would be possible in almost every instance to defeat the election of any officer directly by the people, and thus very much inconvenience the carrying on of the affairs of government, if not throw them into almost hopeless confusion. But it might at times happen that the two or more highest candidates on the list, even under the plurality rule, might receive an equal number of votes, though this is barely probable. However, should such an emergency arise, then it becomes the duty of the Legislative Assembly, immediately after it convenes and organizes, to meet in joint session and decide between the two or more candidates who received an equal and the highest number of votes. If it fails to do this on the first ballot, it must continue balloting until one or the other of the candidates is chosen.

Contested elections other than such as are provided for in this section are usually determined by the courts, except contests for seats in either house of the Legislative Assembly, which is determined by such house itself.

## SECTION 3.

## ELIGIBILITY OF EXECUTIVE OFFICERS.

No person shall be eligible to the office of Governor, Lieutenant Governor, or Superintendent of Public Instruction, unless he shall have attained the age of thirty years at the time of his election, nor to the office of Secretary of State, State Auditor, or State Treasurer, unless he shall have attained the age of twenty-five years, nor to the office of Attorney General unless he shall have attained the age of thirty years, and have been admitted to practice in the Supreme Court of the state, or territory, of Montana, and be in good standing at the time of his election. In addition to the qualifications above prescribed, each of the officers named shall be a citizen of the United States and have resided in the state or territory two years next preceding his election.

Under this section no person can at the present time be Governor or Lieutenant Governor or Superintendent of Public Instruction of this state, unless he is at least thirty years of age, a citizen of the United States and a resident of Montana for at least two years immediately preceding his election; nor can he be Attorney General unless he has the above qualifications, and in addition is a member of the bar of this state in good standing at the time of his election; nor can he be Secretary of State or State Auditor or State Treasurer, unless he is at least twenty-five years of age, and has the qualifications of the other executive officers herein enumerated with reference to citizenship and residence. The purpose of all this is to make all these officers of an age not less than the importance of their respective offices would suggest should be the lowest limit, and to make them all familiar with our state and national institutions, as well as directly interested in the future welfare of the state. The additional requirements for Attorney General are, of course, natural and necessary, as the duties of that office are such that they could not be performed by any person not a member of the bar of this state.

## SECTION 4.

## SALARIES OF EXECUTIVE OFFICERS.

Until otherwise provided by law, the Governor, Secretary of State, State Auditor, Treasurer, Attorney General and Superintendent of Public Instruction, shall quarterly as due, during their continuance in office, receive for their services compensation, which is fixed as follows: Governor, five thousand dollars per annum; Secretary of State, three thousand dollars per annum; Attorney General, three thousand dollars per annum; State Treasurer, three thousand dollars per annum; State Auditor, three thousand dollars per annum; Superintendent of Public Instruction, two thousand five hundred dollars per annum. The Lieutenant Governor shall receive the same per diem as may be prescribed by law, for the Speaker of the Legislative Assembly, to be allowed only during the sessions of the Legislative Assembly.

The compensation enumerated shall be in full for all services by said officers respectively rendered in any official capacity or employment whatever during their respective terms of office. No officer named in this section shall receive, for the performance of any official duty, any fee for his own use, but all fees fixed by law for the performance by any officer of any official duty, shall be collected in advance, and deposited with the State Treasurer quarterly to the credit of the state. No officer mentioned in this section shall be eligible to or hold any other public office, except member of the State Board of Education during his term of office.

The salaries of all of these officers have not been changed by law, and hence are the same as prescribed in this section. The compensation of the Lieutenant Governor, when he is not acting as Governor, is ten dollars per day during the sessions of the Legislative Assembly, and twenty cents per mile in going from and returning to his place of residence from the seat of government. When he acts as Governor, he receives the same salary as does the chief executive.

The salaries herein prescribed for each of said officers is in full of all duties he now performs or which may hereafter devolve upon him by law. If the law prescribes that he shall collect any fee for the rendition of certain services, these must be turned in to the credit of the state at the end of every quarter.

## SECTION 5.

## EXECUTIVE POWER VESTED IN GOVERNOR.

The supreme executive power of the state shall be vested in the Governor, who shall see that the laws are faithfully executed.

Thus, we see that the supreme executive power of this state is vested in one man—the Governor. This does not mean that the Governor must perform all executive functions pertaining to the state directly, for such would be quite impossible. It does mean, however, that all other officers and boards whose duty it is to perform certain prescribed executive functions in this state are and shall be, to a greater or less degree, directly or indirectly answerable to him and subject to his direction.

The reason for this is that experience has proven beyond the shadow of a doubt that where one man is charged with the entire executive responsibility of a state, the laws are much more efficiently and speedily carried into effect than where such responsibility rests on two or more. Where the latter is the case, there is always bound to be more or less jealousy, dissatisfaction and delay, while what is needed in carrying out the laws is the concentrated energy, force and decision of a single will. When a law is to be made, it can be framed the most beneficently by the combined wisdom of many, but the rule is very different when it comes to enforcing such law.



## SECTION 6.

## GOVERNOR TO BE COMMANDER-IN-CHIEF.

The Governor shall be commander-in-chief of the militia forces of the state, except when these forces are in the actual service of the United States, and shall have power to call out any part or the whole of said forces to aid in the execution of the laws, to suppress insurrection or to repel invasion.

As the chief executive officer of this state, whose duty it is at all times to enforce the laws and protect the people from insurrection or invasion, it naturally follows that the Governor should be commander-in-chief of the state militia forces, except when they are in the actual service of the United States, in which event the President is their commander-in-chief.

The state military forces consist, in time of peace, of such volunteer companies as may be organized under her military laws. In time of war, in addition to these, the state military forces consist of the volunteer and drafted soldiers raised to carry on the same. But as soon as the volunteer and drafted soldiers, as well as the regular militia, pass into the service of the United States, their commander-in-chief becomes the President, instead of the Governor, although their company and regimental officers, when under the control of either the President or the Governor, are appointed by the latter.

## SECTION 7.

## APPOINTIVE POWER OF GOVERNOR.

The Governor shall nominate, and by and with the consent of the Senate, appoint all officers whose offices are established by this Constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If during a recess of the Senate a vacancy occurs

in any such office, the Governor shall appoint some fit person to discharge the duties thereof until the next meeting of the Senate, when he shall nominate some person to fill such office. If the office of Secretary of State, State Auditor, State Treasurer, Attorney General, or Superintendent of Public Instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the Governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified.

This power of the Governor to nominate, and if the Senate concurs in his nomination, to appoint all civil officers of this state whose election or appointment is not otherwise provided for, is very similar to the power of the President to do likewise under Article II., section 2, clause 2, of the United States Constitution. The manner of doing this is by the Governor sending to the Senate, in writing, the nomination of a certain person whom he desires to appoint to a designated office. If the Senate, by a majority vote, decides that such nomination is meritorious and that the nominee should be appointed, it authorizes the Governor to do so. This is done by giving to such appointed officer a commission, signed by the Governor and attested to by the Secretary of State by affixing thereto the great seal of Montana.

But it often happens that a vacancy in one of these appointive offices occurs during a recess of the Senate. In such case it would be both inconvenient and costly to convene the Senate in special session for the purpose of confirming a nomination to fill such vacancy, and to leave the office unoccupied might result in much hindrance, delay or confusion in carrying on the business of government. Hence, in such cases the Governor is given the power to appoint some person to fill the vacancy, which person holds office until the next session of the Senate, at which time the Governor must nominate some person to fill the same as in case the vacancy had occurred while the Senate was in session. But in all cases where the Senate refuses to

confirm the nomination made by the Governor, the nominee cannot be commissioned, and the Governor must continue nominating some other party, until he selects one whom the Senate is willing to confirm.

If the office of Secretary of State, or of State Treasurer or of Attorney General, or of State Auditor, or of Superintendent of Public Instruction becomes vacant, the Governor has the power to fill the same directly by appointment, without the confirmation of the Senate, and this whether it is in session at the time the vacancy occurs or not. Such appointee holds office until his successor is elected and qualified.

Since the Governor has the power to appoint, it necessarily follows that he can at any time remove those whom he has the unlimited power to appoint.

## SECTION 8.

### STATE EXAMINER.

The Legislative Assembly shall provide for a State Examiner, who shall be appointed by the Governor and confirmed by the Senate. His duty shall be to examine the accounts of State Treasurer, supreme court clerks, district court clerks, and all county treasurers and treasurers of such other public institutions as may be prescribed by law, and he shall perform such other duties as the Legislative Assembly may prescribe. He shall report at least once a year and oftener if required to such officers as may be designated by the Legislative Assembly. His compensation shall be fixed by law.

The Legislative Assembly has long since carried out the instruction given it by this section, and has prescribed that the State Examiner thus appointed shall, in addition to performing the duties required of him by this section, also examine the books and accounts of the Secretary of State, State Auditor, Attorney General, Superintendent of Public Instruction, county attorneys, county assessors, county

clerks, county auditors, county superintendents of common schools, sheriffs, public administrators, coroners, county surveyors, and boards of county commissioners of each county; and also examine the accounts and books of all public institutions, as well as those of all banks, banking corporations and savings banks, and investment and loan companies, incorporated under the laws of this state.

The salary of the State Examiner is three thousand dollars per annum, and he must report the result of his examinations to the Governor on the first Monday of May and the first Monday of November, in each year, and also the result of his examinations upon any particular officer at any time when such report is required by the Governor.

The purpose of all this is to prevent to as great an extent as possible the misappropriation of the people's money by state and county officers.

## SECTION 9.

### PARDONING POWER.

The Governor shall have the power to grant pardons, absolute or conditional, and to remit fines and forfeitures, and to grant commutation of punishments and respites after conviction and judgment for any offenses committed against the criminal laws of this state; *provided, however*, that before granting pardons, remitting fines and forfeitures, or commuting punishments, the action of the Governor concerning the same shall be approved by a board, or a majority thereof, composed of the Secretary of State, Attorney General and State Auditor, who shall be known as the Board of Pardons. The Legislative Assembly shall by law prescribe the sessions of said board, and regulate the proceedings thereof. But no fine or forfeiture shall be remitted, and no commutation of pardon granted, except upon the approval of a majority of said board after a hearing in open session and until notice of the time and place of such hearing, and of the relief sought, shall have been given in some newspaper of general circulation in the county where the



crime was committed, at least once a week for two weeks. The proceedings and decisions of the board shall be reduced to writing, and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by them and filed, with all papers used upon the hearing, in the office of the Secretary of State. The Governor shall communicate to the Legislative Assembly, at each regular session, each case of remission of fine or forfeiture, reprieve, commutation or pardon, granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of remission, commutation, pardon or reprieve, with the reasons for granting the same and the objections, if any, of any member of the board made thereto.

A *pardon* is the exemption of an individual from the punishment the law inflicts for a crime he has committed, and of which he has been convicted and sentenced. A criminal who is pardoned is thereby restored to his civil rights (See Article IX., Section 2). Hence, it is usually the custom of the pardoning power to pardon a criminal shortly prior to the expiration of his sentence. A *remission of fines and forfeitures* is very similar to a pardon, the only difference being that the latter exempts a person convicted of crime from suffering punishment by confinement and hard labor in the state penitentiary, while the former exempts a person convicted of crime from suffering punishment by the imposition of a fine or forfeiture. A *commutation* of a sentence is to make it less severe than it originally was. A *respite* or *reprieve* is a temporary stay in the execution of a sentence in capital cases.

It will be noticed that the power of the Governor of this state to grant pardons, etc., is very much limited by the interposition of the Board of Pardons, and otherwise; whereas, that of the President and of the Governors of most of the states is almost unlimited. The reason for this is to prevent the abuse of this remarkable power.

Pardons, reprieves, commutations and remissions may be granted for all offenses committed against the criminal laws of this state, including treason, but this can be done only after trial and conviction.

## SECTION 10.

## SOME DUTIES AND SOLE POWERS OF THE GOVERNOR.

The Governor may require information in writing from the officers of the Executive Department upon any subject relating to the duties of their respective offices, which information shall be given upon oath when so required; he may also require information in writing, at any time, under oath, from all officers and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions, and may, at any time he deems it necessary, appoint a committee to investigate and report to him upon the condition of any executive office or state institution. The Governor shall, at the beginning of each session, and from time to time by message, give to the Legislative Assembly information of the conditions of the state, and shall recommend such measures as he shall deem expedient. He shall also send to the Legislative Assembly a statement with vouchers of the expenditures of all moneys belonging to the state and paid out by him. He shall also, at the beginning of each session, present estimates of the amount of money required to be raised by taxation for all purposes of the state.

The power of the Governor to require the executive officers of this state to give him information in writing upon any subject relating to the duties of their respective offices, is very similar to the power of the President to require a similar report from his cabinet officers and others, with the exception that the Governor may require that such information be given upon oath, while the President cannot. And in addition, the Governor may require that information in writing, and upon oath, be given him at any time by the officers of state institutions, such as the insane asylum, etc., upon any subject relating to the condition, management and expenses of their respective offices and institutions; and if he is not satisfied with the information given in this manner, he may appoint a committee to investigate and report to him upon the condition of any executive office or state institution. This is so provided in order that the chief executive, who is personally responsible for the

enforcement of the laws, may be continually in touch with those who are elected or appointed to assist him in this respect, and also to enable him to be in a position to determine whether or not these assistants do their duty well.

Like the President, it is the duty of the Governor at the beginning of each session of the Legislative Assembly, and from time to time during its continuance, to send his message to it, giving a general account of the condition of the state and the doings of the Executive Department since the sending of the last message, as well as suggesting or recommending the passage of such measures as he may think needful; and it is also incumbent upon him, at the beginning of each session, to give his estimates of the amount of money required to be raised by taxation during each of the two succeeding fiscal years for the purpose of defraying the expenses of carrying on the state government, and besides present to the Legislative Assembly a statement with vouchers of the expenditures of all moneys belonging to the state and paid out by him. But the Legislative Assembly in no case need follow his suggestions or recommendations unless it sees fit to do so.

## SECTION II.

### POWER TO CALL SPECIAL SESSIONS.

He may on extraordinary occasions convene the Legislature by proclamation, stating the purposes for which it is convened, but when so convened, it shall not have the power to legislate on any subjects other than those specified in the proclamation, or which may be recommended by the Governor, but may provide for the expenses of the session and other matters incidental thereto. He may also, by proclamation, convene the Senate in extraordinary session for the transaction of executive business.

The Legislative Assembly of this state meets in regular session but once in every two years. During the interim, however, some extraordinary occasion might arise, to deal

with which its action is needed at once and cannot be put off until the next regular session. When this is the case, the Governor has the power to convene the Legislative Assembly in what is called "special session." This is done by means of a proclamation issued by the Governor and published in the various papers of the state. But the Legislative Assembly when thus convened in special session can only legislate on such subjects as were mentioned in the Governor's proclamation as the reason for calling such special session, and such other subjects as may be recommended to its consideration by the Governor, though it may provide for the defraying of the expenses of the session and other matters incidental thereto without the Governor's recommendation. The Legislative Assembly need not, however, take any action on any of the subjects for the consideration of which it was convened in special session, or which may be recommended to it after it is thus convened, though such conduct would be extraordinary, to say the least.

## SECTION 12.

### HOW BILLS BECOME LAWS.

Every bill passed by the Legislative Assembly shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it, and thereupon it shall become a law, but if he do not approve, he shall return it with his objections to the house in which it originated, which house shall enter the objections at large upon its journal and proceed to reconsider the bill. If then two-thirds of the members present agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be considered, and if approved by two-thirds of the members present in that house it shall become a law notwithstanding the objections of the Governor. In all such cases the vote of each house shall be determined by yeas and nays, to be entered on the journal. If any bill shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed



it, unless the legislature shall, by their adjournment, prevent its return, in which case it shall not become a law, without the approval of the Governor. No bill shall become a law after the final adjournment of the Legislative Assembly, unless approved by the Governor within fifteen days after such adjournment. In case the Governor shall fail to approve of any bill after the final adjournment of the Legislative Assembly it shall be filed, with his objections, in the office of the Secretary of State.

A bill may become a law in three ways, as follows: First, it may pass both houses of the Legislative Assembly by a majority vote and be signed by the Governor within the required time; second, it may pass both houses by a majority vote, be vetoed by the Governor, and passed over his veto by a two-thirds vote of the members present in each house; and third, it may pass both houses by a majority vote and fail to receive the signature of the Governor within five days after it is presented to him, Sundays excluded, when these are not the last five days of the session, or when the Legislative Assembly did not, by adjourning, prevent its return on the fifth day. A bill may fail to become a law in four ways, as follows: First, it may fail to pass the house in which it originated; second, it may pass the house in which it originated, but fail to pass the other house; third, it may pass both houses by a majority vote, be vetoed by the Governor, and fail to be passed over his veto by a two-thirds vote of those present in each house; and, fourth, it may be "pocketed" by the Governor during the last five days of the session; and fail to receive his signature within fifteen days thereafter. When the Governor vetoes a bill during the session of the Legislature, he must return the same to the house in which it originated, together with his objections, which objections must be entered upon the journal of such house. When he "pockets" a bill, he must file same, with his objections, in the office of the Secretary of State.

The two great ends attained by all this are, first, to protect the Executive Department from the encroachments upon its proper authority by the Legislative Department; and, second, to interpose an additional stay upon hasty legislation. It will be noticed, however, that the Governor's veto, like the President's, is not intended to be final, but simply to bring about a reconsideration of the matter.

### SECTION 13.

#### VETO OF ITEMS IN GENERAL APPROPRIATION BILL.

The Governor shall have the power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts thereof approved shall become law, and the item or items disapproved shall be void, unless enacted in the manner following: If the Legislative Assembly be in session he shall within five days transmit to the house in which the bill originated, a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

Usually the Governor must either approve a bill passed by the Legislative Assembly in whole, or else veto it in whole. But under this section, he is given the power to approve one or more items in a general appropriation bill and veto the remainder. When one or more items of a general appropriation bill are vetoed, each one must be reconsidered separately, and in the same manner as prescribed for the passage of a bill over the Governor's veto, but in all cases such items shall be void unless repassed by a two-thirds vote of the members present in each house. The purpose of this is to interpose a stay on the enactment into law of certain appropriation items, unworthy, perhaps, in themselves, and unable to be passed upon their own merits if considered separately, but which slipped through on the merits of the worthy items of the general appropriation bill.

## SECTION 14.

## VACANCIES IN THE OFFICE OF GOVERNOR.

In case of the failure to qualify, the impeachment or conviction of felony or infamous crime of the Governor, or his death, removal from office, resignation, absence from the state, or inability to discharge the duties of his office, the powers, duties and emoluments of the office, for the residue of the term, or until the disability shall cease, shall devolve upon the Lieutenant Governor.

Vacancies in the office of Governor may be either permanent or temporary. They are temporary when the duly elected Governor fails to qualify on the first Monday of January in the year next succeeding the one in which he was elected, or when impeachment charges have been preferred against him by the House of Representatives, or when he is absent from the state, or when, because of some mental or physical disease, he is unable to discharge the duties of his office. They are permanent when the Governor has been impeached by the Senate and removed from office, or has been convicted of felony or other infamous crime, or when he has been removed by death, or has resigned. When the vacancy is permanent, the Lieutenant Governor is entrusted with the powers and duties of Governor for the unexpired term for which he and his chief were elected; but when the vacancy is only temporary, then the powers and duties of the Governor devolve upon the Lieutenant Governor only during the time the disability continues. Directly upon its removal, the Governor again becomes vested with the supreme executive authority and the Lieutenant Governor must step aside. Whenever the Lieutenant Governor exercises the powers or performs the duties of Governor, whether temporarily or permanently, he shall during the time he acts as Governor receive the emoluments of that office.

## SECTION 15.

## DUTIES OF THE LIEUTENANT GOVERNOR.

The Lieutenant Governor shall be President of the Senate, but shall vote only when the Senate is equally divided. In case of the absence or disqualification of the Lieutenant Governor, from any cause which applies to the Governor, or when he shall hold the office of Governor, then the President pro tempore of the Senate shall perform the duties of the Lieutenant Governor until the vacancy is filled or the disability removed.

The Lieutenant Governor of this state is the presiding officer of its Senate, just as is the Vice President of the United States the presiding officer of the national Senate. But he cannot vote on any matter before the Senate, unless there is a tie, when he has the casting or deciding vote. This is different from the power of the Speaker of the House of Representatives, and also of the President pro tempore of the Senate when acting as its presiding officer, for both of these, being members of their respective houses, can vote on all matters before the same, but neither of them, in case of a tie, has the casting vote, and hence when such is the case the matter is lost.

Vacancies in the office of Lieutenant Governor may also be permanent or temporary, and may result from any cause which applies to the office of Governor, and, in addition, from his acting as chief executive. When such is the case the President pro tem. of the Senate acts as its presiding officer until the vacancy is filled by the election of another Lieutenant Governor, or until the disqualification is removed. The President pro tem. of the Senate, when acting as its presiding officer, receives the same compensation per diem during the sessions of the Legislative Assembly as that enjoyed by the Lieutenant Governor.



## SECTION 16.

## VACANCIES IN THE OFFICE OF BOTH GOVERNOR AND LIEUTENANT GOVERNOR.

In case of the failure to qualify in his office, death, resignation, absence from the state, impeachment, conviction of felony or infamous crime, or disqualification from any cause, of both Governor and Lieutenant Governor, the duties of the Governor shall devolve upon the President pro tempore of the Senate until such disqualification of either the Governor or Lieutenant Governor be removed or the vacancy filled, and if the President pro tempore of the Senate, for any of the above named causes, shall become incapable of performing the duties of Governor, the same shall devolve upon the Speaker of the House.

The office of Governor is by far the most important office in this state, and hence to allow it to be vacant for any length of time would doubtless result disastrously to the people of Montana. Therefore, to guard against every probable contingency in this respect, the foregoing section, which provides that if both the Governor and Lieutenant Governor, for any cause mentioned in Section 14, this Article, cannot exercise the powers and perform the duties of the office of Governor, the same shall devolve upon the President pro tem. of the Senate, or if he also for any of such causes is disqualified, then upon the Speaker of the House, was inserted. Thus far there is no instance on record in this state where either the President pro tem. or the Speaker has been called upon to exercise the functions of Governor.

## SECTION 17.

## THE GREAT SEAL.

The first Legislative Assembly shall provide a seal for the state, which shall be kept by the Secretary of State and used by him officially, and known as the Great Seal of the State of Montana.

The Great Seal of this state, as provided by the Legislative Assembly thereof, is as follows: In the center of the

seal is a group representing a plow and a miner's shovel and pick. Upon the right of this is a representation of the Great Falls of the Missouri, and upon the left is a mountain scene, while underneath are the words, "Oro-y-Plata." The seal is two and one-half inches in diameter, and surrounded by these words, "The Great Seal of the State of Montana."

The purpose of the Great Seal of the State of Montana is to authenticate all public instruments, commissions, proclamations, etc., and its keeper is the Secretary of State.

Each of the executive and state officers, and also the clerks of the courts of record, county clerks and notaries public must have seals for the purpose of authenticating their actions, as must also municipal and private corporations.

## SECTION 18.

### AUTHENTICATION OF GRANTS AND COMMISSIONS.

All grants and commissions shall be in the name and by the authority of the State of Montana, sealed with the Great Seal of the state, signed by the Governor and countersigned by the Secretary of State.

Public documents of this character are very important, and hence to guard against the people being imposed upon by counterfeits or forgeries the above section was inserted. No state grant, commission, proclamation, etc., is genuine unless it is made in the name and by the authority of the State of Montana, and in addition is signed by the Governor, countersigned by the Secretary of State, and sealed with the Great Seal of the State of Montana.

## SECTION 19.

## ACCOUNTS OF EXECUTIVE OFFICERS.

An account shall be kept by the officers of the Executive Department and of all public institutions of the state of all moneys received by them, severally from all sources, and of every service performed, and of all moneys disbursed by them severally, and a semi-annual report shall be made to the Governor under oath; they shall also, at least twenty days preceding each regular session of the Legislative Assembly, make full and complete reports of their official transactions to the Governor, who shall transmit the same to the Legislative Assembly.

The object of all this is to prevent the misappropriation of public funds, by requiring that the state executive officers and the officers of public institutions shall furnish the Governor semi-annually, upon oath, a statement of the receipts and disbursements of their respective offices; and to prevent misfeasance and malfeasance in office, by requiring that each of such officers shall at least twenty days prior to each regular session of the Legislative Assembly, give a complete report of the official transactions of his office to the Governor, who in turn must transmit the same to the Legislative Assembly.

## SECTION 20.

## STATE BOARD OF EXAMINERS, ETC.

The Governor, Secretary of State and Attorney General shall constitute a State Board of Prison Commissioners, which board shall have such supervision of all matters connected with the state prisons as may be prescribed by law. They shall constitute a Board of Examiners, with power to examine all claims against the state, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law. And no claims against the state except salaries and for compensation of officers fixed by law, shall be passed upon by the Legislative Assembly without first having been considered and acted upon by said Board. The Legislative As-

sembly may provide for the temporary suspension of the State Treasurer by the Governor, when the Board of Examiners deems such action necessary for the protection of the moneys of the state.

The duty of the State Board of Examiners created by this section is to examine all claims against the state, except salaries or the compensation of officers fixed by law, and also to act in the capacity of a supplies and furnishing board for the purpose of furnishing to the Legislative and other departments of the state government all necessary supplies; provide offices in which to transact the public business, etc. No claim against the state, except as otherwise herein provided, can be given any consideration or action by the Legislative Assembly, unless first considered and acted upon by the Board of Examiners, though if such claim is rejected by the Board, an appeal lies to the Legislative Assembly. This is so provided in order that the valuable time and attention of the Legislative Assembly may not be taken up by considering or inquiring into the grounds upon which claims against the state are supported. And whenever the Board of Examiners believes that the State Treasurer is embezzling the public funds, or is negligent in keeping the accounts or performing the duties of his office, and the like, they must certify that fact to the Governor, who must straightway suspend such Treasurer temporarily or until the truth of the charge can be either sustained or disproven by a thorough examination of the books and accounts of his office. If the charge is sustained, then the Governor must appoint some person to act as State Treasurer in the place of the suspended officer, which person holds his office until the State Treasurer is restored or until the election and qualification of his successor. The reason for this is that if it were necessary to wait for the Legislative Assembly to impeach such officer,



much valuable time might be lost and incalculable injury occasioned by the delay.

The Board of State Prison Commissioners has absolute control over the management of the state penitentiary, the warden thereof being entirely under its direction.

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## ARTICLE VIII.

### JUDICIAL DEPARTMENT.

#### SECTION 1.

##### IN WHAT THE JUDICIAL POWER IS VESTED.

The judicial power of the state shall be vested in the Senate sitting as a Court of Impeachment, in a Supreme Court, District Courts, justices of the peace, and such other inferior courts as the Legislative Assembly may establish in any incorporated city or town.

The Senate has judicial power only to try impeachments. And it is the only court that can try such cases. All other judicial powers of this state are vested in a Supreme Court, District Courts, justices of the peace, and police courts. Of these the Supreme Court and the District Courts only are courts of record, the other two being inferior courts. Justices' courts are established in each organized township of the state, while police courts are established only in incorporated cities or towns.

## SECTION 2.

## JURISDICTION OF THE SUPREME COURT.

The Supreme Court, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, and shall have a general supervisory control over all inferior courts, under such regulations and limitations as may be prescribed by law.

The jurisdiction of the Supreme Court is of two kinds: appellate and original; and such jurisdiction extends to all parts of the state. It exercises original jurisdiction only in the issuing of certain writs mentioned in the next succeeding section; in all other cases its jurisdiction is appellate. It also has a general supervisory control over the other courts of the state. This latter was so provided in order that the appellate jurisdiction of the Supreme Court might not in any manner be hampered, either by the inferior courts refusing to allow appeals from their decisions, or, having allowed such appeals, to respect and obey the decisions of the appellate court. This supervisory control is effected by a resort to various writs, each applicable to the particular case.

## SECTION 3.

## POWERS OF THE SUPREME COURT.

The appellate jurisdiction of the Supreme Court shall extend to all cases at law and in equity, subject, however, to such limitations and regulations as may be prescribed by law. Said court shall have power in its discretion to issue and to hear and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and injunction, and such other original and remedial writs as may be necessary or proper to the complete exercise of its

appellate jurisdiction. When a jury is required in the Supreme Court to determine an issue of fact, said court shall have power to summon such jury in such manner as may be provided by law. Each of the justices of the Supreme Court shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any District Court of the state or any judge thereof; any such writs may be heard and determined by the justice or court, or judge, before whom they are made returnable. Each of the justices of the Supreme Court may also issue and hear and determine writs of certiorari in proceedings for contempt in the District Court, and such other writs as he may be authorized by law to issue.

The Supreme Court has original jurisdiction to issue, hear and determine the following writs only: Writs of *mandamus*, *habeas corpus*, *quo warranto*, *certiorari*, *injunction* and *prohibition*, and such other writs as may be necessary and proper to the complete exercise of its appellate jurisdiction. It will be noticed, however, that the power of the court to exercise original jurisdiction is discretionary with it. Hence, except in extreme cases or when the complete exercise of its appellate jurisdiction is being hampered, it refrains from exercising original jurisdiction, and refers all petitioners for any of the writs named in this section to the District Courts, which have concurrent power with the Supreme Court to issue, hear and determine them.

These great remedial writs have been in use by the courts of record of most civilized nations from time immemorial, and their beneficence is too well established to admit of question. The office of each of them is as follows:

Writ of *Mandamus* (We command you).—This writ compels civil officers and others to discharge certain duties and trusts imposed upon them by law—to do something required of them by law, but which they have refused or neglected to do.

Writ of *Habeas Corpus* (That you have the body).—By means of this writ an officer or any other person charged

with unjustly imprisoning or confining another is compelled to show reason why such person should not be liberated, and failing in this to set him free. This is the remedy the law gives for the enforcement of the civil right of personal liberty, and so important is it thought to be that any justice of the Supreme Court, as well as the court itself, may issue writs of *habeas corpus* to any part of the state and make the same returnable either before himself, or before the Supreme Court, or before any District Court of the state, or any judge thereof, as may be most convenient or best serve the ends of justice.

Writ of *Quo Warranto* (By what warrant or authority).—By means of this writ a person or corporation charged with usurping power is compelled to show by what authority he or it exercises such power, and failing in this to desist from henceforth doing so. Thus, if an officer whose term expired on the first Monday of January, 1901, refuses at that time to surrender his office to his duly elected and qualified successor, such successor can apply to the court for a writ of *quo warranto*, and thereby compel his predecessor to either vacate the office in his favor or show legal cause for not doing so.

Writ of *Certiorari* (To be certified or made more certain).—This writ, in Montana, is also called the writ of *review*, and its office is to compel an inferior tribunal, board or officer, exercising judicial functions, when it appears that such inferior court, board or officer has exceeded its or his jurisdiction, and there is no appeal therefrom, nor a plain, speedy and adequate remedy at law, to send to the court issuing the writ a certified copy of the record of the proceeding in which it is claimed that jurisdiction has been exceeded, for the purpose of reviewing the same. Thus, if the board of county commissioners rejects an official bond for any other reason than that the same was not



executed by sufficient and responsible sureties, or is not in form and substance as required by law, a writ of *certiorari* will lie to review their action. Writs of *certiorari* may be issued by either the Supreme Court or the District Courts, or by any justice of the Supreme Court when it appears that the District Court has exceeded its jurisdiction in contempt proceedings.

Writ of *Injunction*.—The purpose of this writ is to compel the doing of certain things, which, if left undone, would result in irremediable injury, and to enjoin or forbid the doing of certain things, which, if done, would result in an injury for which the law affords no plain, speedy and adequate remedy.

Writ of *Prohibition*.—This writ is the counterpart of the writ of *mandamus*. It forbids civil officers, boards, etc., to do certain things, which, if done, would be in excess of their jurisdiction or authority.

Writ of *Error*. It is by means of this writ principally that the Supreme Court is enabled to exercise completely its appellate jurisdiction. It may be issued in all cases where an appeal lies from the District Courts to the Supreme Court, and its office is to compel the District Court to send up for examination and review the record upon which a judgment was given therein, and, on such examination, to affirm or reverse the same according to law. It is very similar to *certiorari*, the chief distinguishing difference being that the writ of *error* lies where the law allows an appeal, while the writ of *certiorari* lies where no appeal is allowed by law.

The appellate jurisdiction of the Supreme Court, however, is by far the most important, and it extends to all cases at law and in equity in which a judgment, decision or decree has been entered in any of the District Courts. When a case is appealed, the application and the interpretation of

the law by the lower court only is reviewed, the findings of fact receiving no consideration except so far as the application of the law to them is concerned. If, upon such review, it is determined that the lower court applied the law correctly to the particular case at bar, or interpreted the same correctly, the decision, judgment or decree of such court is affirmed. If otherwise, such decision is reversed and the case usually sent back for a new trial, with instructions to the trial court to interpret or apply the law differently.

The decisions of the Supreme Court as to the application or interpretation of the laws of this state are followed almost without exception by the other courts, and usually thereafter by itself, though not invariably.

A decision of the state Supreme Court upon the constitutionality of a state law is the highest authority relative thereto, as is the decision of the United States Supreme Court relative to the constitutionality of the laws of Congress.

## SECTION 4.

### TERMS OF THE SUPREME COURT.

At least three terms of the Supreme Court shall be held each year at the seat of government.

Under the law as it is at the present time there must be not less than four terms of the Supreme Court held during each year, commencing on the first Tuesdays of March, June, October and December, respectively. The chief justice (or any two associate justices) has the power to call a special term at any time.

## SECTION 5.

## ORGANIZATION OF THE SUPREME COURT.

The Supreme Court shall consist of three justices, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said justices may adjourn the court from day to day, or to a day certain, and the Legislative Assembly shall have the power to increase the number of said justices to not less nor more than five. *In case any justice or justices of the Supreme Court shall be in any way disqualified to sit in a cause brought before such court, the remaining justice or justices shall have power to call on one or more of the district judges of this state as in the particular case may be necessary to constitute the full number of justices of which said court shall then be composed, to sit with them in the hearing of said cause. In all cases where a district judge is invited to sit and does sit as by this section provided, the decision and the opinion of such district judge shall have the same force and effect, in any case heard before the court, as if regularly participated in by a justice of the Supreme Court.*

The foregoing section was amended at the general election in 1900, by adding thereunto the words in italics. This is the only amendment that has thus far been made to the Constitution of Montana.

At the present time the Supreme Court consists of one chief justice and two associate justices—three in all. But the Legislative Assembly has the power to increase the number to no more and no less than one chief justice and four associate justices, though it is hardly probable that such will be done for many years to come, if at all.

A majority of these justices is sufficient to form a quorum for the transaction of business and to pronounce a decision, though a less number may adjourn from day to day, or to a day certain, in order to keep up the organization of the court. This is in conformity with the doctrine that "the majority rules," and with the practice in the highest courts of all civilized states.

It often happens, however, that one or more of the justices, either because of being of kin to one of the parties, or because he was interested in the case while still prac-

ting at the bar, or otherwise, is disqualified to sit in a cause brought before the Supreme Court. In such case it is very obvious that justice would often fail to be done or administered, as the concurrence of a majority of the justices is necessary to render a decision. Therefore, in order that the hands of justice might not be tied in this respect, the foregoing amendment, which provides that the remaining justice or justices shall have the power to call upon as many district judges of this state as may be necessary to constitute the full number of justices of which the court shall then be composed, to sit with him or them in the hearing of such cause was adopted. It will be noticed that no district judge can be compelled to accept such call, though under the circumstances it is hardly probable that any of them would refuse the opportunity offered. And when such district judge does sit as provided in this section, his decision and opinion have the same force and effect as if made or pronounced by one of the regularly elected and qualified justices. The reason for this is obvious.

## SECTION 6.

### ELECTION OF JUSTICES.

The justices of the Supreme Court shall be elected by the electors of the state at large, as hereinafter provided.

That is, the justices of the Supreme Court shall be elected or chosen by a plurality of the votes cast by those who are permitted to exercise the privilege of suffrage under the laws of the State of Montana. This is different from the justices of the United States Supreme Court, who are appointed by the President, by and with the advice and consent of the Senate.

For the terms of office of justices, and the time of their election, see sections 7 and 8, this Article.



## SECTION 7.

## TERMS OF JUSTICES.

The term of office of justices of the Supreme Court, except as in this Constitution otherwise provided, shall be six years.

This is also different from the terms of office of justices of the United States Supreme Court, who hold for life, or during good behavior.

## SECTION 8.

## TIME OF ELECTION OF JUSTICES.

There shall be elected, at the first general election, provided for by this Constitution, one chief justice and two associate justices of the Supreme Court. At said election the chief justice shall be elected to hold his office until the general election in the year one thousand eight hundred and ninety-two, and one of the associate justices to hold his office until the general election in the year one thousand eight hundred and ninety-four, and the other associate justice to hold his office until the general election in the year one thousand eight hundred and ninety-six, and each shall hold until his successor is elected and qualified. The terms of office of said justices, and which one shall be chief justice, shall at the first and all subsequent elections be determined by ballot. After said first election one chief justice or one associate justice shall be elected at the general election every two years, commencing in the year one thousand eight hundred and ninety-two, and if the Legislative Assembly shall increase the number of justices to five, the first terms of office of such additional justices shall be fixed by law in such manner that at least one of the five justices shall be elected every two years. The chief justice shall preside at the sessions of the Supreme Court, and in case of his absence, the associate justice having the shortest term to serve shall preside in his stead.

One justice of the Supreme Court is now chosen at the general election held on the first Tuesday after the first Monday of November in each even-numbered year, and the term of office of each of them begins on the first Monday of the next succeeding January after his election.

The chief justice presides at all sessions of the Supreme Court, but if he happens to be absent, the justice having the shortest term to serve presides in his stead.

Should the number of justices be increased to five by the Legislative Assembly, then it is more than probable that their terms of office will be extended to ten years, one of them being elected every two years.

The reason for electing justices in this manner, and not all of them at the same time, is to at all times have a number of experienced jurists on the Supreme Bench.

## SECTION 9.

### CLERK OF SUPREME COURT.

There shall be a clerk of the Supreme Court, who shall hold his office for the term of six years, except that the first clerk elected shall hold his office only until the general election in the year one thousand eight hundred and ninety-two, and until his successor is elected and qualified. He shall be elected by the electors at large of the state, and his compensation shall be fixed by law, and his duties prescribed by law and by the rules of the Supreme Court.

A clerk of the Supreme Court is now elected at each general election held in every sixth year from and after the year 1892, so that our present clerk was elected in 1898, and his successor will be elected at the general election in 1904.

The duties of the clerk, generally speaking, are to keep the seal of the court and the records and files thereof; also, to keep the roll of attorneys and to act in the capacity of a general bookkeeper for the court. His salary is twenty-five hundred dollars per annum.

## SECTION 10.

## QUALIFICATIONS OF JUSTICES.

No person shall be eligible to the office of justice of the Supreme Court, unless he shall have been admitted to practice law in the Supreme Court of the territory or State of Montana, be at least thirty years of age and a citizen of the United States, nor unless he shall have resided in said territory or state at least two years next preceding his election.

Under this section no person can qualify as a justice of the Supreme Court unless he has been admitted to the Montana bar, is at least thirty years of age, a citizen of the United States, either by birth or naturalization, and a resident of Montana for at least two years next preceding the date of his election. Taking the dignity and the importance of the office into consideration, these requirements appear to be extremely wise and just.

## SECTION 11.

## JURISDICTION OF THE DISTRICT COURTS.

The District Court shall have original jurisdiction in all cases at law and in equity, including all cases which involve the title or right of possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all cases in which the debt, damage, claim or demand, exclusive of interest, or the value of the property in controversy exceeds fifty dollars; and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for; of actions of forcible entry and unlawful detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of actions of divorce and for annulment of marriage, and for all such special actions and proceedings as are not otherwise provided for. And said courts shall have the power of naturalization, and to issue papers therefor, in all cases where they are authorized to do so by the laws of the United States. They shall have appellate jurisdiction in such cases arising in justices' and other inferior courts arising in their respective districts as may be prescribed by law, and consistent with

the Constitution. Their process shall extend to all parts of the state, provided that all actions for the recovery of, the possession of, quieting the title to, or for the enforcement of liens upon real property, shall be commenced in the county in which the real property, or any part thereof, affected by such action or actions, is situated. Said courts and the judges thereof shall have power also to issue, hear and determine writs of mandamus, quo warranto, certiorari, prohibition, injunction and other original and remedial writs, and also all writs of habeas corpus on petition by, or on behalf of, any person held in actual custody in their respective districts. Injunctions, writs of prohibition and habeas corpus may be served on legal holidays and non-judicial days.

The District Courts are, perhaps, in a sense, by far the most important courts of the state, as they are the principal courts of original jurisdiction. True, they have appellate jurisdiction also in cases arising in justices' and police courts, but it is for the remarkable scope of their original jurisdiction and their nearness to the people that they are noted, in contradistinction to the Supreme Court, which is noted principally for its appellate jurisdiction. It is in these courts that all important cases and most special proceedings are commenced, of whatever nature or kind, the smaller ones being first brought before a justice of the peace or police court.

## SECTIONS 12 AND 13.

### JUDICIAL DISTRICTS.

The state shall be divided into judicial districts, in each of which there shall be elected by the electors thereof, one judge of the district court, whose term of office shall be four years, except that the district judges first elected shall hold their offices only until the general election in the year one thousand eight hundred and ninety-two, and until their successors are elected and qualified. Any judge of the District Court may hold court for any other district judge, and shall do so when required by law.

At the present time the state is divided into twelve judicial districts, composed of from one to four counties each, over each of which districts not less than one dis-



district judge presides. These judges are elected by the qualified voters of their respective districts, at the general election held on the first Tuesday after the first Monday of November in every year the number of which is divisible by four, and hold office for four years from and including the first Monday of the next succeeding January, or until their successors are elected and qualified.

Any of these district judges may hold court for any other district judge, upon his request, and must do so upon the request of the Governor; and while thus holding court such judge has the same power, both in court and at chambers, as he has in the district for which he was elected, and his decisions and orders have the same force and effect as if rendered or made by the duly elected and qualified judge for such district. This is so provided in order that, in case any judge is disqualified to sit in a certain cause, or otherwise, justice in his district need not be either hindered, delayed or defeated because of that fact.

Section 13 simply defined the boundaries of the judicial districts of the state, until such time as the Legislative Assembly could change them. At the present time it is of no value except to the historian, and hence is omitted.

## SECTION 14.

### NUMBER OF DISTRICT JUDGES.

The Legislative Assembly may increase or decrease the number of judges in any judicial district; *provided*, that there shall be at least one judge in any district established by law; and may divide the state or any part thereof into new districts; *provided*, that each be formed of compact territory and be bounded by county lines, but no changes in the number or boundaries of districts shall work a removal of any judge from office during the term for which he has been elected or appointed.

Thus, we see that the Legislative Assembly has the power to apportion the state into as many judicial districts

as it may deem necessary, and to determine how many judges each district shall have, the only restrictions on its power in this respect being that each district must have at least one judge, and that each of such districts must be formed of compact and contiguous territory and be bounded by county lines.

At the present time the state is divided into twelve judicial districts, each of which districts has one judge, except the one comprising Lewis & Clark county, which has two, and the one comprising Silver Bow county, which has three.

## SECTION 15.

### WRITS OF ERROR.

Writs of error and appeals shall be allowed from the decisions of the said District Courts to the Supreme Court under such regulations as may be prescribed by law.

An appeal in law is the removal of a matter or cause from an inferior to a superior court for the purpose of reviewing, correcting, or reversing the judgment or sentence of the inferior tribunal. In order that appeals in all matters where they are allowed by law may be effectively secured, the foregoing section authorizing the issuing of writs of error and appeals by the Supreme Court to any District Court to compel the sending up of the record of a certain cause or action determined by such District Court, for the purpose of reviewing, correcting or reversing the judgment, sentence or decree rendered therein, was inserted.

## SECTION 16.

## QUALIFICATIONS OF JUDGES.

No person shall be eligible to the office of judge of the District Court unless he be at least twenty-five years of age and a citizen of the United States, and shall have been admitted to practice law in the Supreme Court of the territory or State of Montana, nor unless he shall have resided in this state or territory at least one year next preceding his election. He need not be a resident of the district for which he is elected at the time of his election, but after his election he shall reside in the district for which he is elected during his term of office.

The qualifications of district judges are similar to those of Supreme Court justices, with the exception that they need be but twenty-five years of age at the time of their election, instead of thirty, and the further exception that their residence in this state need be only for one year next preceding the date of their election, instead of two. Judges need not be residents of the districts for which they are elected, but after their election they must reside in such districts during their terms of office. This is so provided in order that the judge might be close at hand in case of an emergency, as it would be manifestly inconvenient and at times disastrous to property and personal rights if it were necessary to seek him outside of his district.

## SECTION 17.

## TERMS OF THE DISTRICT COURTS.

The District Court in each county which is a judicial district by itself shall be always open for the transaction of business, except on legal holidays and non-judicial days. In each district where two or more counties are united, until otherwise provided by law, the judges of such district shall fix the term of court, provided that there shall be at least four terms a year held in each county.

The sessions of the District Courts are held at the county seats of each of the counties. In those counties which comprise a judicial district by themselves the District Court

is always open for the transaction of business, except on legal holidays and non-judicial days. In all other cases the number of sessions held in each county and the dates on which they commence are determined by the district judge of the district in which such county is situated; provided, that there must be at least four terms or sessions held in each county annually.

## SECTION 18.

### CLERKS OF DISTRICT COURTS.

There shall be a clerk of the District Court in each county, who shall be elected by the electors of his county. The clerk shall be elected at the same time and for the same term as the district judge. The duties and compensation of said clerk shall be as provided by law.

The duties of the District Court clerks, generally speaking, are to keep the seal and the records and files of the District Court for their respective counties, etc. Their salaries range all the way from twelve hundred to thirty-five hundred dollars per annum, according to the assessed valuation of the counties for which they are elected.

## SECTION 19.

### COUNTY ATTORNEYS.

There shall be elected at the general election in each county of the state one county attorney, whose qualifications shall be the same as are required for a judge of the District Court, except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be two years, except that the county attorneys first elected shall hold their offices until the general election in the year one thousand eight hundred and ninety-two, and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.

On the first Tuesday after the first Monday in November of every even-numbered year there is elected in each county of this state a county attorney for such county.



The duty of the county attorney is to prosecute in the name of the state all criminal actions arising in his county, and also to act in the capacity of his county's lawyer. The salary of the county attorney ranges all the way from one thousand to three thousand dollars per annum, according to the assessed valuation of the county for which he was elected. One-half of this salary is paid by the state and the remainder by his county. This is because, as the county attorney is compelled to prosecute the state's criminal actions arising in the county for which he was elected, it is but fair and just that one-half of his salary should be paid by the state.

## SECTION 20.

### JUSTICES OF THE PEACE.

There shall be elected in each organized township of each county by the electors of such township at least two justices of the peace, who shall hold their offices, except as otherwise provided in this Constitution, for the term of two years. Justices' courts shall have such original jurisdiction within their respective counties as may be prescribed by law, except as in this Constitution otherwise provided; *provided*, that they shall not have jurisdiction in any case where the debt, damage, claim or value of the property involved exceeds the sum of three hundred dollars.

Justices of the peace, being township judicial officers, are elected by the qualified voters of their respective townships, and at the same time and for the same term as county attorneys. Each organized township is entitled to at least two justices of the peace. It often happens, however, that some of such townships fail to choose any justices

of the peace at the general election, or do not choose as many as they are entitled to by law. When such is the case, the board of county commissioners for the county in which such township is situated has the power, upon good cause shown, to appoint a sufficient number of persons as justices of the peace therefor as may be necessary to supply the deficiency, which appointees hold office until the next general election and until their successors are elected and qualified, if they are not sooner removed by the power that appointed them.

Justices' courts have no other jurisdiction than original, and this is very limited, and in many cases over which they have original jurisdiction the District Courts also have. Thus, we see by this section that no justice's court has jurisdiction over any case where the debt, damage, claim or demand, or the value of the property involved exceeds the sum of three hundred dollars. And over all of these cases where the debt, demand, etc., exceeds the sum of fifty dollars, exclusive of interest, the District Court also has jurisdiction (section 11, this Article). The jurisdiction of justices' courts extends to all parts of their respective counties, while that of the District Courts extends to all parts of the state. Justices of the peace, except in the larger cities, need not be lawyers, as must district judges and Supreme Court justices. Any person is qualified for such office if he is an elector of the township for which he aspires to be elected.

For further limitations on the jurisdiction and powers of justices' courts, see next section.

## SECTION 21.

## JURISDICTION OF JUSTICES' COURTS.

Justices' courts shall not have jurisdiction in any case involving the title or right of possession of real property, nor in cases of divorce, nor for annulment of marriage, nor of cases in equity; nor shall they have power to issue writs of habeas corpus, mandamus, certiorari, quo warranto, injunction or prohibition, nor the power of naturalization; nor shall they have jurisdiction in cases of felony, except as examining courts; nor shall criminal cases in said courts be prosecuted by indictment; but said courts shall have such jurisdiction in criminal matters, not of the grade of felony, as may be provided by law; and shall also have concurrent jurisdiction with the District Courts, in cases of forcible entry and unlawful detainer.

Except as provided in the last preceding section, justices' courts have jurisdiction only of the following public offenses: Petit larceny, assault in the third degree, breaches of the peace, riots, routs, affrays, committing a willful injury to property, and all other misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or by both such fine and imprisonment; also, of the civil action of forcible entry on, and the unlawful detainer of, real property when such real property is situated within the limits of their respective townships, but of this latter class of actions the District Courts also have jurisdiction.

All other cases, except criminal or civil actions arising from a violation of city or town ordinances, which must be commenced in the police courts (see section 24), must first be brought in the District Courts.

## SECTION 22.

## SESSIONS OF JUSTICES' COURTS.

Justices' courts shall always be open for the transaction of business, except on legal holidays and non-judicial days.

This section means what it plainly says, and hence no comment is necessary.

## SECTION 23.

## APPEALS FROM JUSTICES' COURTS.

Appeals shall be allowed from the justices' courts in all cases, to the District Courts, in such manner and under such regulations as may be prescribed by law.

An appeal lies to the District Courts from the judgments or sentences of justices' courts, in all cases over which they have jurisdiction and which are actually tried by them. But when such appeal is taken, the case is tried *de novo* (anew) in the District Court; that is, such case must be retried both as to matters of law and of fact—it must be tried as if it was first brought in the District Court. This is very different than when appeals are taken from the District Courts to the Supreme Court, for in such cases the questions of law only are retried or reviewed.



## SECTION 24.

## POLICE OR MUNICIPAL COURTS.

The Legislative Assembly shall have power to provide for creating such police and municipal courts and magistrates for cities and towns as may be deemed necessary from time to time, who shall have jurisdiction in all cases arising under the ordinances of such cities and towns, respectively; such police magistrates may also be constituted ex-officio justices of the peace for their respective counties.

The Legislative Assembly has long since exercised the power given it by this section, by providing that a police or municipal court shall be established in every incorporated city or town. The qualifications for police judges are the same as those for justices of the peace. Police judges are elected by the qualified voters of their respective cities or towns on the first Monday of April in each odd-numbered year. Their terms of office commence on the first Monday of May next succeeding the date of their election and continue for two years, or until their successors are elected and qualified.

Police judges, in their respective counties, have the same jurisdiction as that given to justices of the peace, and in addition to this the court itself has jurisdiction over all matters, both civil and criminal, arising because of the violation of any of the ordinances of such cities or towns, respectively. Also, they have jurisdiction of all actions for debt, demand, damage, etc., either for or against their respective cities or towns, where the amount in controversy, exclusive of interest, does not exceed three hundred dollars. If it exceeds such amount, then the District Court only has jurisdiction; and all cases of whatever nature, which may be or have been tried in the police courts, or by the police magistrates, may be appealed to the District Courts in the same manner and with the same effect as from justices' courts.

## SECTION 25.

## COURTS OF RECORD.

The Supreme and District Courts shall be courts of record.

Courts of record are those which proceed according to the course of the common law, and have attributes and exercise functions independent of the persons of the magistrates generally designated to preside over them, and in addition possess and use a seal. Such courts in this state are the District Courts and the Supreme Court only. All other courts now in existence, or which may hereafter be created, are and will be inferior courts, or courts not of record.

## SECTION 26.

## UNIFORMITY OF LAWS RELATING TO COURTS.

All laws relating to courts shall be general and of uniform operation throughout the state: and the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law, shall be uniform.

The wisdom of this provision is apparent when we consider how much evil and injustice might result if the Legislative Assembly had the power to pass special laws relative to any of the subjects enumerated above.

## SECTION 27.

## TITLE OF PROCESSES.

The style of all process shall be "The State of Montana," and all prosecutions shall be conducted in the name and by the authority of the same.

A process is a writ of whatever nature issuing out of a court or from a judge having power to issue same. Under this section all processes or writs must begin with the words "The State of Montana," to which the following is generally added, "To ..... (naming the person or officer to whom the writ is addressed), Greeting." All criminal prosecutions, of whatever nature, must also be carried on "in the name and by the authority of the State of Montana," and all indictments and informations usually conclude with these words: "Contrary to the form, force and effect of the statute in such cases made and provided, and against the peace and dignity of the State of Montana."

The purpose of all this is to secure uniformity in the titles of processes throughout the state, and to show that the state's sovereign authority is behind every official action of the duly elected, acting and qualified officers of the law.

## SECTION 28.

## CIVIL ACTIONS.

There shall be but one form of civil action, and law and equity may be administered in the same action.

The term "civil action" includes all suits at law and in equity, except those of a criminal nature. Under the old common law there were many forms of civil actions, such

as assumpsit, debt, covenant, trespass on the case, trover, replevin, etc., and in no case could law and equity be administered by the same court and at the same time. This is now all changed under the code, which declares that there shall be but one form of civil action, and that law and equity may be administered by the same court and in the same action. Thus, we see that while under the common law a very great deal of attention was paid to mere form, under the code it is substance that is sought after, and justice is administered speedily and completely by one tribunal. The practice of law is much simplified by this, and many of the abuses arising from the arbitrary decisions of the common law courts done away with.

## SECTION 29.

### SALARIES OF JUSTICES AND JUDGES.

The justices of the Supreme Court and the judges of the District Courts shall be paid quarterly by the state, a salary, which shall not be increased or diminished during the terms for which they shall have been respectively elected. Until otherwise provided by law, the salary of the justices of the Supreme Court shall be four thousand dollars per annum each, and the salary of the judges of the District Courts shall be three thousand five hundred dollars per annum each.

The salaries of justices of the Supreme Court and of judges of the District Courts have not as yet been changed by law, and hence they still remain as fixed by this section.

The reason for providing that the salaries of none of these justices or judges shall be increased or diminished during their terms of office is to render them at all times entirely independent of the Legislative Assembly.



## SECTION 30.

## NO ADDITIONAL FEES ALLOWED.

No justice of the Supreme Court nor judge of the District Court shall accept or receive any compensation, fee, allowance, mileage, perquisite or emolument for or on account of his office in any form whatever, except the salary provided by law.

The purpose of this is to take from every Supreme Court justice and every District Court judge all hope of ever increasing his income by delaying justice, or otherwise, for the purpose of enlarging his fee, allowance, mileage, or the like.

## SECTION 31.

## JUDICIAL OFFICERS SHALL NOT PRACTICE LAW.

No justice or clerk of the Supreme Court, nor judge or clerk of any District Court, shall act or practice as an attorney or counsellor at law in any court of this state during his continuance in office.

The reason for this is obvious when we consider how much injustice might be done if a judge or justice was put in the position to try, or a clerk of any of these courts to have anything to do with, cases which he was interested in as an attorney or as a counsellor at law.

## SECTION 32.

## PUBLICATION OF SUPREME COURT DECISIONS.

The Legislative Assembly may provide for the publication of decisions and opinions of the Supreme Court.

The publication of these decisions and opinions has long since been authorized by the Legislative Assembly. This is so provided in order that they may be easily obtained for purposes of reference, for it will be remembered that such decisions are followed by the lower courts as to all local or state matters upon which they touch, and are considered the highest authority relative to the constitutionality or meaning of all state laws.

## SECTION 33.

## RESIDENCE OF JUDGES AND OTHERS.

All officers provided for in this Article, excepting justices of the Supreme Court, who shall reside within the state, shall respectively reside during their term of office in the district, county, township, precinct, city or town for which they may be elected or appointed.

To be compelled to seek a judge, justice of the peace or police judge outside of his district, township, city or town, or to seek a justice of the Supreme Court outside of the state, would be very inconvenient, and in many cases work irremediable injury to person or property. Hence, to guard against this the foregoing section was inserted.

## SECTION 34.

## VACANCIES.

Vacancies in the office of justice of the Supreme Court, or judge of the District Court, or clerk of the Supreme Court, shall be filled by appointment, by the Governor of the state, and vacancies in the offices of county attorneys, clerk of the District Court, and justices of the peace shall be filled by appointment by the board of county commissioners of the county where such vacancy occurs. A person appointed to fill any such vacancy shall hold his office until the next general election and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected.

A vacancy in the office of justice of the Supreme Court or of judge of the District Court, or of a clerk of either of these courts, or of a justice of the peace or police judge, may occur by death, by resignation, by the removal of any of these officers from their respective districts, townships, cities or towns, or from the state; by their removal from office, by insanity, or by absence from the state for more than sixty days without leave of the Legislative Assembly, and the like. When such a vacancy occurs, the same may be filled by appointment as provided herein, and the appointee holds office for the unexpired term only, and until his successor is elected and qualified.

## SECTION 35.

## JUDICIAL OFFICERS CANNOT HOLD MORE THAN ONE OFFICE.

No justice of the Supreme Court or district judge shall hold any other public office while he remains in the office to which he has been elected or appointed.

This is so provided in order that the minds of justices and judges may be kept as free as possible from all matters not relating solely to their purely judicial duties, under the

belief that if such is done they will be the more likely to judge justly and without bias. If a justice or judge accepts any other public office, such acceptance renders his justiceship or judgeship vacant.

## SECTION 36.

### JUDGE PRO TEMPORE.

A civil action in the District Court may be tried by a judge pro tempore, who must be a member of the bar of the state, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the cause; and in such case any order, judgment or decree, made or rendered therein by such judge pro tempore, shall have the same force and effect as if made or rendered by the court with the regular judge presiding.

This means that if the parties to a civil action are not willing to have such action tried by the presiding judge of the district in which the same is brought, or their attorneys of record are not, but would rather have some other licensed attorney at the Montana bar try the case for them, they can do so by either entering into a mutual agreement to that effect or have their attorneys of record do so for them. Such agreement, however, must be in writing and approved by the court before it can go into effect. When this is done, the attorney agreed upon, after being sworn to try the cause, has the same power in regard thereto, and any order, judgment or decree he may make therein has the same force and effect, as if made or rendered by the court with the regular judge presiding. It is very seldom that this is done, though a case may arise in which the right to do so might become very important.



## SECTION 37.

## ABSENCE FROM THE STATE.

Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office.

If the rule were otherwise a justice, judge, justice of the peace or police judge, even if he had his legal residence within the state, district, township, city or town for which he was elected, might seriously hamper or delay justice by remaining out of the state for a long period of time. Hence, it became necessary to fix upon some reasonable time limit in this respect, and with that end in view the above provision was inserted. If any judicial officer of this state or of any of the municipalities thereof now absents himself for more than sixty days from the state his office is deemed vacated, and may be filled by the appointment or election of some other competent person.

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## ARTICLE IX.

RIGHT OF SUFFRAGE AND QUALIFICATIONS TO  
HOLD OFFICE.

## SECTION I.

## MANNER OF VOTING.

All elections by the people shall be by ballot.

The reason for requiring that the voting at all elections by the people shall be by ballot is because such manner of voting affords an opportunity for secrecy, and thereby tends

to make the voter more independent. Under our present system of voting it is next thing to impossible to determine how a person votes, unless he himself chooses to give the secret away.

## SECTION 2.

### QUALIFICATIONS OF VOTERS.

Every male person of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all general elections and for all officers that now are, or hereafter may be, elective by the people, and upon all questions which may be submitted to the vote of the people: first, he shall be a citizen of the United States; second, he shall have resided in this state one year immediately preceding the election at which he offers to vote, and in the county, town or precinct such time as may be prescribed by law; *provided*, first, that no person convicted of felony shall have the right to vote unless he has been pardoned; *provided*, second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this Constitution; *provided*, that after the expiration of five years from the time of the adoption of this Constitution no person except citizens of the United States shall have the right to vote.

It will be remembered that the states, and not the national government, have the right to say who shall and who shall not be given the privilege to vote within their respective borders. In the exercise of this right Montana has declared that only persons having the following five qualifications shall be given the privilege of voting. First, they must be of the *male sex*. This shuts out women, except as provided under Sections 10 and 12, this Article. Second, they must be at least *twenty-one years of age or over*. This shuts out children and minors. Third, they must be *citizens of the United States*. This shuts out new comers from foreign countries until they have had sufficient time to become acquainted with our national institutions and government. Fourth, they must have *resided in this state at least one year prior to the time they offer to vote*. This shuts out

new comers from other states until they have had sufficient time to become acquainted with our state institutions and laws. And, fifth, they must have *resided in the county and precinct in which they offer to vote at least thirty days prior to the time of voting*. This shuts out all transients who, though otherwise qualified, yet because of their roving about from place to place, have no particular interest in the institutions and government of Montana or the political divisions thereof, and it also prevents persons from casting more than one ballot on the same day, by voting at two or more precincts.

A person must have *all* of the above five qualifications before he can vote in this state, but all persons having these qualifications cannot vote. Thus, we see that persons convicted of felony, unless they have been pardoned, on the ground of public policy cannot vote even if they are otherwise qualified; neither can soldiers, sailors or marines of the United States army or navy stationed at any military or naval place within this state (Section 6, this Article); nor can idiots or persons of unsound mind (Section 8, this Article).

That part of this Article beginning with "Provided, second," is now obsolete and hence needs no comment.

### SECTION 3.

#### GAINING OR LOSING RESIDENCE.

For the purpose of voting no persons shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, or of the state, nor while engaged in the navigation of the state or the United States, nor while a student at any institution of learning, nor while kept at any alms house or other asylum at the public expense, nor while confined in any public prison.

This means that no person a resident of this state shall, for the purpose of voting, *lose* his residence here because

of his being absent from this state if he is employed in the military, naval or civil service of this state or of the United States, or is employed in navigating the waters of this state or of the United States, or is attending an institution of learning, or is being kept in any almshouse or other asylum at the public expense, or is confined in some public prison. Also, that no person a resident of some other state, for the purpose of voting, shall *gain* a residence in this state because of his being employed in the service of the United States within her borders, or is employed in the navigation of the waters of this state, or is attending an institution of learning therein, or is kept or confined in one of the charitable or penal institutions located within her borders.

## SECTION 4.

### VOTERS PRIVILEGED FROM ARREST.

Electors shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections and in going to and returning therefrom.

This is to prevent evil-minded or evil-disposed persons from interfering with the free exercise of the important privilege or right of the ballot, by trumping up some petty offense against a voter, real or imaginary, and causing his arrest therefor before he has an opportunity to cast his ballot, in aid or furtherance of some sinister purpose or design.



## SECTION 5.

## WHEN VOTERS NEED NOT PERFORM MILITARY DUTY.

No elector shall be obliged to perform military duty on the days of election, except in time of war or public danger.

“Freedom is the freeman’s will,” and in order to secure to every voter the right and opportunity to express that will, even though he be performing military duty, except when the public safety requires otherwise, the foregoing section was inserted. But voters may perform military duty on such days if they wish to do so.

## SECTION 6.

## PERSONS WHO CANNOT BECOME RESIDENTS.

No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed at any military or naval place within the same.

This is so provided on the ground of public policy. Soldiers, sailors and marines in the service of the United States, although they may have the other qualifications, yet being transients, have no interest in state governmental affairs, and hence should not be allowed to vote here.

## SECTION 7.

## QUALIFICATIONS FOR OFFICE.

No person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States, and who shall not have resided in this state at least one year next before his election or appointment.

For the consideration of this section, see section 11, this Article, and the comments thereon.

## SECTION 8.

## PERSONS NON COMPOS MENTIS.

No idiot or insane person shall be entitled to vote at any election in this state.

Since persons *non compos mentis* are unable to take care of themselves, it is plain that they should not be permitted to help govern others. Hence, to attain that end this provision, that no idiot or insane person shall be allowed to exercise the right of suffrage in this state, was inserted.

## SECTION 9.

## REGISTRATION LAWS.

The Legislative Assembly shall have the power to pass a registration and such other laws as may be necessary to secure the purity of elections and guard against abuses of the elective franchise.

A registration law is one which provides for the making out or preparing of a list of the voters in each registration district, voting precinct, county, city or town of the state, a short time before election day, and the publication of the same for corrections. If an elector's name is not on the list for his county, city, town or precinct, then he cannot vote at such election, unless he proves that he is a qualified voter. This is sometimes called "swearing in" one's vote. Such a law has been passed by the Legislative Assembly, as have also laws regulating the manner of voting, the manner of counting and tabulating the votes, and of receiving and canvassing the returns, etc. The purpose of all these laws is to prevent to as great an extent as possible people from voting who are not entitled to do so, and to prevent fraud in the counting and canvassing of the votes.

## SECTION 10.

## ELIGIBILITY OF WOMEN TO VOTE AND HOLD OFFICE.

Women shall be eligible to hold the office of county superintendent of schools or any school district office, and shall have the right to vote at any school district election.

Women, if otherwise qualified, are equally eligible with men in this state to hold the office of county superintendent of schools, but not that of State Superintendent of Public Instruction; also, the office of district school trustee, and of clerk of the board of district school trustees. If possessed of the requisite qualifications, they may also vote at all school elections, but at no other time, except as provided in section 12. The reason for permitting women to hold the offices enumerated above and to vote as provided in this section, at the same time that they are denied the right to hold any other office in this state or to vote at any other time or upon any other question (except as provided in section 12), is not quite clear, but we presume it is because women were believed to take as much interest in school management and school affairs as men, while in the questions and affairs of government their interest and knowledge is a minus quantity, or nearly so.

## SECTION 11.

## ELIGIBILITY FOR OFFICE.

Any person qualified to vote at general elections and for state officers in this state shall be eligible to any office therein, except as otherwise provided in this Constitution, and subject to such additional qualifications as may be prescribed by the Legislative Assembly for city offices and offices hereafter created.

This section is remarkable rather for what it does not say than for what it does. It says that all persons *qualified* to vote at general elections and for state offices shall be

*eligible* to hold any office in this state, except as otherwise provided in this Constitution (Article V., section 3; Article VII., section 3; Article VIII., sections 10, 16; 19, etc.) or by the Legislative Assembly in the case of municipal offices or offices that have been created since the adoption of this Constitution or which may hereafter be created, but it does not say that all persons *not qualified* to vote at general elections shall be *ineligible* to hold any office in this state. Hence, under this section any person, of whatever sex or age, could hold any office in this state, unless the qualifications for that office were specifically prescribed by the Constitution or by the Legislative Assembly, and this whether he or she was a citizen of the United States and a resident of this state or not. But in this connection, Section 7, the consideration of which we have deferred until this time, steps in and says that no person shall be elected or appointed to any office in this state unless such person is a citizen of the United States and a resident of this state for at least one year next preceding his election or appointment. This effectually bars out all persons not citizens of the United States and not residents of this state for the required time from holding any elective or appointive office in this state, but it does not bar out women nor does it bar out minors, though the latter are disqualified from holding office by legislative enactment. Hence, taking the Constitution and the law literally, it would seem that women, as well as men, can hold any office in this state, unless the qualifications for such office are specifically prescribed by this Constitution or by law. Luckily, the qualifications for all offices in this state, except a few unimportant ones, are specifically prescribed in some manner or other, and for that reason it has thus far been unnecessary to bring this matter to the attention of the Supreme Court for final solution, but should such ever be the case we believe that wo-



men, though otherwise qualified, would be held ineligible to hold office in this state, except as provided in the next preceding section, for the reason that to allow them to do so would be contrary to the spirit and intention of our Constitution and laws and against public policy.

## SECTION 12.

### QUESTIONS OF TAXATION.

Upon all questions submitted to the vote of the tax-payers of this state, or any political division thereof, women who are tax-payers and possessed of the qualifications for the right of suffrage required of men by this Constitution shall equally, with men, have the right to vote.

This means that women, if they are tax-payers and have the other qualifications required of men by Section 2, shall be permitted equally with men to vote on all questions submitted to the tax-payers of this state only, or to those of any political division thereof, such as a county, city, town, school district, etc. This seems only just, for if a woman pays taxes she surely had ought to have the right to vote on all questions of taxation equally with the male tax-payers.

## SECTION 13.

### A PLURALITY ELECTS.

In all elections held by the people under this Constitution, the person or persons who shall receive the highest number of legal votes, shall be declared elected.

This means that the candidate who receives the highest number of votes cast for any office in this state, whether this number be a majority of all votes cast for such office or not, shall be declared elected thereto. In other words, a plurality elects. If the rule were otherwise,—that a ma-

jority only could elect,—then would election by a direct vote of the people fail in nearly every case, as but few candidates for any office receive a majority when there are more than two in the field and aspiring to the same. Such a condition of affairs would be very inconvenient to say the least, and might seriously hamper the carrying on of the business of government. Hence, the wisdom of the foregoing.

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## ARTICLE X.\*

### STATE INSTITUTIONS AND PUBLIC BUILDINGS.

This article, so far as it now concerns us, simply provides that the state shall establish and support, in such manner as may be prescribed by law, institutions for the benefit and care of the insane, the blind, the deaf and dumb, the old soldiers, the orphans, and for others who have claims upon the sympathy and aid of society; also, educational, reformatory and penal institutions.

In compliance with it the Legislative Assembly has established an insane asylum at Warm Springs, Deer Lodge county; a deaf and dumb asylum at Boulder, Jeffer-

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\*The sections of this and of many of the succeeding articles are omitted, for the reason that their provisions are of no practical value or importance to any but lawyers and those entrusted with the administration of government. Besides, many of such provisions, to a more or less extent, are beyond the scope of a work of this nature, it being designed, not to take them into the minor details of state government, for we believe that such a course would not be of any material betterment to them, but to give the people generally a clear, correct and concise idea of our most important state and municipal political institutions, in order that they may be in a position to the more intelligently oversee, superintend and direct their proper administration. Therefore, we have contented ourselves by commenting briefly and to the point upon the most important parts of each of such articles.

son county; a state capitol building at Helena, Lewis & Clark county; a state orphans' home at Twin Bridges, Madison county; a soldiers' home at Columbia Falls, Flathead county; state law, historical and circulating libraries, with headquarters at Helena, Lewis & Clark county; a state university at Missoula, Missoula county; a state school of mines at Butte, Silver Bow county; a state agricultural college at Bozeman, Gallatin county; a state normal school at Dillon, Beaverhead county; a state prison at Deer Lodge, Powell county; and a state reform school at Miles City, Custer county. Besides these, each county has a home for the poor and infirm.

All of the above institutions, except those for educational purposes, are supported by appropriations from the state treasury, except those established by the counties, which are supported by appropriations from the treasuries of the counties in which they are situated. The state educational institutions are supported mainly from the income derived from the state agricultural college, university and normal school lands, the remainder being appropriated from the state treasury. The fund from which this income is derived can never be decreased, as it is made inviolable and is guaranteed by the state, though it may be increased.

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## ARTICLE XI.

### EDUCATION.

Among other things, this article makes it the duty of the Legislative Assembly "to establish and maintain a general, thorough and uniform system of public, free common schools," and the fact that Montana has one of the best

common school systems of any of the Western states demonstrates how fully the trust has been executed.

The public schools are maintained or supported from two sources. The first of these is by direct taxation; the second is by the interest and rents accruing from the public school fund and from the public school lands of the state. The public school fund consists, first, of the proceeds arising from the sale of all public lands which have been or which hereafter may be granted to the state by the Federal government for public school purposes; second, all unspecified grants of land or money made to the state by the general government; third, all grants of land or money made to the state by the Federal government for general educational purposes; fourth, all property that may escheat to the state because of the decease of its owner without a will and without heirs; fifth, all unclaimed shares or dividends of any corporation incorporated under the laws of this state; and, sixth, all other grants, gifts, devises or bequests made to the state by private individuals, associations or corporations for educational purposes. The public school fund is under the control and direction of the State Board of Land Commissioners, consisting of the Governor, the Superintendent of Public Instruction, the Secretary of State and the Attorney General, and such board also has control and direction of all lands which have been granted for the support of the state educational institutions mentioned in the last article.

The public school fund is made inviolable by the Constitution; that is, it cannot be decreased for any purpose whatever, though it may be increased by grant, gift, devise, or bequest. Only the interest and rents accruing therefrom yearly can be used for public school purposes, and this is apportioned to the several school districts of the state in proportion to the number of minors between the ages of



six and twenty-one years, residing therein respectively. But no school district shall be entitled to its proportion of the money thus distributed unless it maintains a public free school for at least three months during the year in which distributions are to be made. The reason for this is self-evident.

The teaching of the tenets of all sectarian institutions in any of the public schools or higher institutions of learning in our state is strictly forbidden, as is also the requiring of a sectarian or partisan qualification as a condition of admission into any public educational institution in this state, either as teacher or pupil. This is so provided in order to forever guard against the many evils which have been proven by the experience of ages to invariably flow from mixing religion with politics and education.

In short, the common schools of Montana are open and free to all persons between the ages of six and twenty-one years, and this without regard to the sex, race, nationality, religious belief or partisan opinions of such persons, and so are the higher state educational institutions to all those having the required educational qualifications for admission.

The common school system of the state is under the general supervision of the Superintendent of Public Instruction, who is elected at the same time and for the same term as the other state executive officers (Article VII., Section 1). Under him are the county superintendents of schools, one in each county, who are elected for the same term and at the same time as other county officers (Article XVI), and who have general supervision over the schools and teachers in their respective counties. The local supervision and management of the public schools is in the hands of the board of school trustees for each district, respectively.

The reason for the establishment of our common schools is because the bitter experience of the ages has taught us that "in knowledge there is power," and that the strength of every nation professing, like our own, to be builded upon the consent of the governed lies chiefly in the knowledge and education of her people. A nation, the people of which are ignorant and uneducated, is unfit for freedom, and the people thereof cannot long maintain it if given to them, as they are not in a position to intelligently express through the ballot-box the freeman's will. On the other hand, a nation, the people of which are educated and familiar with the fundamental principles of government, will assert their freedom and maintain it, peaceably if they can, forcibly if they must, against the usurpation of demagogues, successful military commanders and trusts. Such a nation is our own. But the span of life is short, and we who today wield the sovereign's scepter will soon be called to our last long sleep. With our departure would fade the splendor of our power, our freedom and our institutions, unless we had done our duty by posterity and brought them up in the ways of knowledge and understanding. Therefore, that such might be the case, the common schools have been established and are maintained at an enormous expense, though with the conviction that the end to be attained will justify the outlay many times over.

"The common school, Oh! let its light  
Shine through our country's story;  
Here lies her health, her wealth, her might;  
Here rests her future glory."

## ARTICLE XII.

## REVENUE AND TAXATION.

Every government, whether it be municipal, state or national, as a condition to its very existence, must have the power of raising money in some manner for the purpose of defraying the expenses necessarily incurred in carrying on the same. A government without the power of taxation would be like a structure without a foundation, like a ship without a rudder floundering hopelessly in a tempest at sea. It would fall of its own weight, or if it existed it would be but a name and without power or means to enforce its will. Hence, in order that this might be avoided, the Legislative Assembly is given the power and directed by this Article to from time to time, as demanded by necessity, levy a *uniform* rate of assessment and taxation on all real and personal property found within this state, and not exempt from taxation, for the support and maintenance of the state. The Legislative Assembly is also given the power, and has exercised it, of imposing a license tax, both upon persons and corporations doing business in this state, and it has also imposed a poll tax on all voters residing within this state between the ages of twenty-one and sixty. But in all these cases the tax or license must be *uniform* throughout the state, and no discrimination must be made in favor of residents of this state and against the residents of other states. And the Legislative Assembly, although it is forbidden to levy taxes upon the inhabitants or property in any county, town, city or municipal corporation of this state, for county, town or municipal purposes, yet it may and has by law vested in the corporate authorities thereof the power to levy, assess and collect taxes for such purposes.

The only kind of taxes which the state or any of its municipal corporations can levy, however, are direct taxes, and this whether such taxes are levied on persons or property, except that the state may levy indirect taxes for the purpose of defraying the expenses of enforcing its inspection laws only, unless Congress gives it power to levy indirect taxes for other purposes, which it has not done, nor is it likely so to do (United States Constitution, Article I., Section 10, Clause 2). But in no case can the municipal corporations of this state levy indirect taxes for any purpose whatever.

All property in this state, whether real or personal, is subject to these direct taxes, except the following, which, on the ground of public policy, is exempt: The property of the United States, the state, counties, cities, towns, school districts, public libraries, municipal corporations, such other property as is used exclusively for agricultural and horticultural societies or for educational purposes, places of actual religious worship, hospitals and places of burial not used for private or corporate profit, and institutions of purely public charity. But no more land than is necessary for such purposes is exempt in any case.

We have seen that taxes must be *uniform* throughout the state and the municipal corporations thereof. In order that this may be brought about three things are necessary:

*First*, that taxes should be levied on the same kinds of property throughout the state and the municipal corporations thereof, and that the same kinds of property should likewise be exempt. Such is the case.

*Second*, that the rate or percentage of taxation should be the same throughout the state for state purposes, and throughout the counties, cities, towns, school districts and municipal corporations thereof, for county, city, town,



school district and municipal purposes. Such is also the case. And,

*Third*, that as taxes are levied on property according to the assessed valuation thereof, the value of all property subject to taxation should be assessed alike. This is done as near as may be, though it is impossible that it should ever be done perfectly, and in this respect our present taxation system is at fault.

The value of all taxable property in the state is assessed by the county assessors of each county, respectively, except that in case a railroad operates in more than one county in this state the value of its franchise, road bed, roadway, rails and rolling stock is assessed by the state board of equalization. An appeal lies in all cases from the assessment fixed by the county assessor to the board of county commissioners of such county, but its decision as to the assessable value of property is final and cannot be inquired into by the courts. As a general rule, taxes are collected for all purposes by the county treasurer of each county. Taxes constitute a lien on the property upon which they are levied, and if they are not paid at the proper time such property may be sold to satisfy them.

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## ARTICLE XIII.

### PUBLIC INDEBTEDNESS.

Under this Article, except in case of war, to suppress insurrection or repel invasion, the highest limit of indebtedness that can be contracted by the state is \$100,000, unless the law which seeks to increase its indebtedness over

such amount has first been submitted to the people at a general election and carried by a majority vote. If such law, however, was not carried by a majority vote, then the same shall be void, as shall all bonds or obligations given by or on behalf of the state in excess of \$100,000, except in the case hereinbefore mentioned. And the highest limit of indebtedness that any county in this state can contract is an amount equal to five per centum of the assessed value of the taxable property in such county, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and no county can incur any indebtedness for any single purpose in excess of \$10,000, without the approval of a majority of the electors thereof, voting at an election to be provided by law. Nor can any city, town, township or school district incur a greater indebtedness than an amount equal to three per centum of the value of the taxable property therein, to be ascertained as in the case of counties, except where an increase over such limit becomes necessary to construct a sewer system or to procure a supply of water for such municipality, the Legislative Assembly may authorize the question to be submitted to the tax-payers effected thereby. In all other cases, however, where an indebtedness is incurred by any county, town, township, city, or school district, in excess of the limit allowed by law, the same shall be void. These provisions are very wise, for one of the greatest curses a state or any of its municipalities can leave to posterity is a heavy bonded debt.

“The mortgaged states their grandsires’ wars regret,  
From age to age in everlasting debt.”

—*Johnson*

This article also wisely prohibits the state or any of its municipalities to give or loan their credit in aid of, or make any donation or grant by subsidy or otherwise to, any

individual, association or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the state by operation of law. The foregoing was inserted as a result of the bitter experience of some of the older states in lending their credit to, or becoming shareholders of, certain railroad and other corporations, which, because of mismanagement and final bankruptcy, either caused such states to lose all money they had invested in these concerns or else compelled them to pay that portion of their debts they had guaranteed.

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## ARTICLE XIV.

### MILITARY AFFAIRS.

The State of Montana has no standing army, nor can it maintain one in time of peace without the consent of Congress (United States Constitution, Article I., Section 10, Clause 2), and the Federal government as a general rule keeps but a very small standing army, thus avoiding the great evils that fall to the lot of those nations that do. Both the state and the nation depend upon their citizen-soldiery to protect them from invasion and to suppress insurrection. This citizen-soldiery is called the Militia, and consists, for national and state purposes, of all able-bodied male citizens of this state between the ages of eighteen and forty-five years, inclusive, except civil officers of this state and of the United States, who are exempt from military duty during the time they are in office.

The Governor is commander-in-chief of the state militia, except when it is in the actual service of the United States, in which event the President is its commander-in-chief. And in time of war, though absent from the state, the Governor still remains commander-in-chief of all military forces of the state that still remain therein and are not in the actual service of the United States, if his absence is consented to by the Legislative Assembly in order that he may lead in person the military forces of this state in actual service.

The Legislative Assembly has also authorized the organization of a uniformed, active militia, to be made up voluntarily from members of the enrolled militia, to be known as the National Guard of Montana. The object of this was to make at least a part of the militia acquainted with the army regulations of the United States, and to put them in a position to be called upon for actual service at a moment's notice, but thus far such laws have borne very little fruit, though the result had ought to be otherwise.

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## ARTICLE XV.

### PRIVATE CORPORATIONS.

A private corporation, as the term is used in this state, is construed to include all associations and joint stock companies having or exercising the powers or privileges of corporations not possessed by individuals or partnerships, and it may be defined to be, "a collection of many individuals united in one body, under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of action,

[Art. 15]



in several respects, as an individual, particularly of taking and granting property, of contracting obligations, and of suing and being sued by its corporate name, of enjoying privileges and immunities in common, and of exercising a variety of political rights more or less extensive, according to the design of its institution or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence."

A private corporation may be either foreign or domestic. It is foreign if it is organized and chartered under the laws of some other state or of a foreign country. It is domestic if it is organized and chartered under the laws of this state. Both foreign and domestic corporations, because of the enormous wealth at the command of many of them, are apt to become tyrannous and disregard the rights of the people if they are not hemmed in by wholesome and wise laws. The provisions of this Article, then, and of many legislative enactments supplemental thereto are designed to accomplish that commendable and worthy end. To enumerate such provisions fully, however, and comment upon the merits or demerits of each, would be entirely beyond the scope of a work of this nature, and hence we have refrained from doing so. In conclusion, therefore, we will only say that the laws of Montana, taking them as a whole, relative to the control and management of private corporations, are above the ordinary, though there is still much latitude for improvement.

[Art. 15]

## ARTICLE XVI.

## MUNICIPAL CORPORATIONS AND OFFICERS.

A municipal or public corporation is an incorporation of persons, inhabitants of a particular place or connected with a particular district within the state, for the purpose of enabling them to conduct its local civil government. It is simply an agent instituted by the state, or under its authority, for the purpose of aiding it in carrying out in detail the objects of government. For the state to directly supervise the minor details of civil government, such as constructing local highways, sewer systems, sidewalks and the like, would be very impracticable, to say the least, if not quite impossible. Besides, our people have an inherent love for local self-government, believing, and rightly, that all affairs that directly affect or pertain to a certain community only, as the best means of disposing of them satisfactorily, should be met and dealt with by the people of such community. Therefore, for these and many other reasons we have the state divided into counties, and the counties into cities, towns, organized townships and school districts, all of which are municipal or public corporations, and exercise certain governmental powers within their respective limits, which powers are, directly or indirectly, delegated to them by the sovereign power of the State of Montana.

Of all of these public corporations the county is by far the most important. Counties are organized and their powers and boundaries defined directly by the Legislative Assembly. The administration of county affairs is in the hands of the board of county commissioners, which may in many respects be said to serve the same office to the county as the Legislative Assembly does to the state. This board consists of three members, one of which is the pre-

siding officer and is styled the Chairman. They are elected for the term of four years. A vacancy in the personnel of the board is filled by appointment by the district judge of the district in which the county wherein such vacancy occurred is situated. Other administrative county officers are the following: County clerk, who is also clerk of the board of county commissioners and ex-officio county recorder; county treasurer, who is also collector of taxes; county assessor; county superintendent of schools; county surveyor; coroner; county auditor, in counties having an assessed valuation of not less than eight million dollars; and public administrator. The executive officer of the county is the sheriff. All of these county officers, except the commissioners, are elected at the general election held on the first Tuesday after the first Monday of November in every even-numbered year, and serve for the term of two years, and until their successors are elected and qualified. County officers may succeed themselves in office as many terms as they can gain the election, except county treasurer, who cannot hold his office for more than two consecutive terms.

Next in importance to the county comes the city and the town. Cities and towns are organized or established and their boundaries defined by the board of county commissioners of the county in which they are situated, but their powers are defined by the Legislative Assembly. Cities are divided into three classes. Cities of the first class are all those having a population of ten thousand or over; those of the second class are such as have a population of not less than five thousand nor more than ten thousand; those of the third class are such as have a population of not less than one thousand nor more than five thousand. Municipalities having a population of not less than three hundred nor more than one thousand are called towns. The principal officers of cities of the first class are a mayor, who

[Art. 16]

is the chief executive officer; two aldermen from each ward, who taken together form the city council and constitute its legislative department; one police judge, who is its judicial officer; one city treasurer, who may be ex-officio tax collector and belongs to the executive department. These are all elected by the qualified voters, on the first Monday of April in each odd-numbered year, and hold their respective offices for two years, or until their successors are elected and qualified. Besides these, there may be appointed by the mayor, with the advice and consent of the council, one city clerk, one city attorney, one chief of police, and the like, all of which officers belong to the executive department. Cities of the second and third classes and towns also have three distinct departments of government, though the number of officers thereof are, of course, limited by necessity, and the manner of choosing them also varies. The mayor and aldermen, however, in all cases are elected directly by the people, as is the police judge and the city treasurer in cities of the second and third classes.

Townships are also organized and their boundaries defined by the board of county commissioners of the county in which they are located, but no township can be organized except upon petition signed by at least fifty citizens resident therein. The powers of an organized or civil township are also prescribed by the Legislative Assembly, and the officers thereof are generally two justices of the peace, who are its judicial officers, and two constables who are its executive officers. Civil townships have no legislative officers. The student must not confound a *civil* township with a *congressional* township, as they are not at all the same, nor need their boundaries be similar. A civil township is organized for governmental purposes, while a congressional township is formed by surveys made under the



laws of Congress, for the purpose of convenience in disposing of the public lands.

School districts are organized and their boundaries defined by the county superintendent of schools of the county in which they are situated, upon petition, but if a county superintendent of schools refuses to organize a school district when legally petitioned so to do, an appeal lies to the board of county commissioners of such county. The officers of a school district are three trustees generally, though in populous school districts their number may be increased to five and even to seven, and a clerk. The trustees are elected by the qualified voters of their respective districts on the first Saturday of April in each year, and hold office for the term of three years, one or more of their number going out of office every year. The clerk is appointed by the board of school trustees, and holds office at its pleasure. The powers of the board are prescribed by the Legislative Assembly.

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## ARTICLE XVII.

### PUBLIC LANDS.

This Article simply relates to the classification, leasing and sale of the public lands of the state. It is of no practical importance to the student, and hence all comment thereon, as well as the sections thereof, are omitted.

## ARTICLE XVIII.

## LABOR.

Under the provisions of this Article the Legislative Assembly has established a Bureau of Agriculture, Labor and Industry, the chief executive officer of which is called the Commissioner of Labor and is appointed by the Governor with the consent of the Senate. This bureau performs, in many respects, much the same office to the state as the Department of Agriculture does to the United States. Under its direction, also, is the state census taken, during every tenth year, beginning with the year 1895. And it is also the duty of the commissioner of this bureau to conduct a public free employment agency, and to have supervision over all public free employment agencies as may be established by the common councils of any of the cities of this state. In addition, it is the duty of said commissioner to advertise far and near the salubrious climate and abundant resources of the state, and to encourage home-seekers and emigrants to settle within her borders. The office of the commissioner of this bureau is at the seat of government, at Helena.

## ARTICLE XIX.

## MISCELLANEOUS SUBJECTS AND FUTURE AMENDMENTS.

## SECTION I.

## OATH OF OFFICE.

Members of the Legislative Assembly and all other officers, executive, ministerial or judicial, shall before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation, to-wit: "I do solemnly swear (or affirm) that I will support, protect and defend the Constitution of the United States, and the Constitution of the State of Montana, and that I will discharge the duties of my office with fidelity; and that I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this state, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the compensation allowed by law. So help me God." And no other oath, declaration or text shall be required as a qualification for any office of trust.

This oath is administered to those elected or appointed to office in this state, for the purpose of more indelibly impressing upon their minds the responsibility of the positions they are about to fill. If an officer has conscientious scruples against taking an oath, such as have the Quakers and several other religious sects, he may affirm instead of swear. The oath of office may be taken before anyone having the power to administer oaths, such as judges, clerks of courts, notaries public, and the like.

## SECTION 2.

## LOTTERIES.

The Legislative Assembly shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this state.

A lottery is a scheme for the distribution of property or prizes by lot or chance, whether called a lottery, raffle, gift enterprise, or by whatever name the same may be known. Lotteries are prohibited in this state, as is also the selling of lottery tickets therein. Every person who contrives, prepares, sets up, proposes or draws any lottery, or who offers lottery tickets for sale or distribution in this state is guilty of a misdemeanor, and upon conviction thereof may be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding two thousand dollars, or both.

## SECTIONS 3 AND 4.

## HOMESTEADS, EXEMPTIONS, ETC.

The Legislative Assembly shall enact suitable laws to prevent the destruction by fire from any cause of the grasses and forests upon lands of the state or upon public lands of the public domain the control of which may be conferred by Congress upon this state, and to otherwise protect the same.

The Legislative Assembly shall enact liberal homestead and exemption laws

Under the last section the Legislative Assembly has passed very liberal homestead and exemption laws. After a declaration of homestead is made by the head of a family, all the lands described therein are exempt from execution, except for debts secured by mortgage, mechanics', vendors' or laborers' liens, or by judgments secured and filed before the declaration was made. But a homestead, if without



the boundaries of a city or town, cannot consist of more than one hundred and sixty acres, or if within such boundaries, of more than one-fourth of an acre, and in neither case can the value of such homestead exceed the sum of twenty-five hundred dollars. The wearing apparel of the judgment debtor and family is also exempt, as is the necessary household furniture, one horse, saddle and bridle, two cows and their calves, four hogs and fifty domestic fowls, etc. And in addition, the necessary tools and implements of husbandry to the farmer, and the necessary tools, etc., to the mechanic, miner or artisan are exempt from execution, as is the office furniture and libraries of professional men, and a great variety of other things, too numerous to mention.

These exemptions are not given to shield debtors from the payment of their just debts, or through any sympathy for them. Instead, they rest only on public policy, and are given to save the community from the burden of supporting, or aiding in the support of, such persons. The right to exemptions is purely personal and may be waived by a debtor at any time.

## SECTION 5.

### PERPETUITIES FORBIDDEN.

No perpetuities shall be allowed, except for charitable purposes.

A perpetuity is the settlement of property, or an interest therein, in such a manner that it will go in the succession prescribed without any power of alienation, beyond the period allowed by law, which in this state is for the life or lives of persons in being at the time such settlement is made. If the settlement is made for a longer period than that, it is void, unless it be for some charitable purpose.

“Perpetuities are abhorred by the law. They make es-

tates incapable of answering the ends of social commerce, and providing for the sudden contingencies of private life, for which property was first established.”

## SECTION 6.

### LOCATION OF COUNTY OFFICES.

All county officers shall keep their offices at the county seats of their respective counties.

This is so provided for the same reason that the state executive officers are required to keep their offices at the state seat of government (Article VII., section 1).

## SECTION 7.

### DISPOSITION OF PUBLIC LANDS.

In the disposition of the public lands granted by the United States, to this state, reference shall always be given to actual settlers thereon, and the **Legislative Assembly** shall provide by law for carrying this section into effect.

The purpose of this section is to encourage the permanent settlement of the public lands belonging to the state. Its provisions are founded on the basic principles of justice, and untold hardships have been thereby avoided in many instances.

## SECTION 8.

## CONSTITUTIONAL CONVENTION.

The Legislative Assembly may at any time, by a vote of two-thirds of the members elected to each house, submit to the electors of the state the question whether there shall be a convention to revise, alter or amend this Constitution; and if a majority of those voting on the question shall declare in favor of such convention, the Legislative Assembly shall at its next session provide for the calling thereof. The number of members of the convention shall be the same as that of the House of Representatives, and they shall be elected in the same manner, at the same places and in the same districts. The Legislative Assembly shall in the act calling the convention designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with the necessary expenses of the convention. Before proceeding, the members shall take an oath to support the Constitution of the United States and of the State of Montana, and to faithfully discharge their duties as members of the convention. The qualifications of members shall be the same as of members of the Senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the Legislative Assembly. Said convention shall meet within three months after such election and prepare such revisions, alterations or amendments to the Constitution as may be deemed necessary, which shall be submitted to the electors for their ratification or rejection at an election appointed by the convention for that purpose, not less than two nor more than six months after the adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alteration or amendment shall take effect.

The time may come, though this is not at all probable, when the people of Montana shall become dissatisfied with their Constitution, and wish to extensively revise, alter or amend same, or change same altogether. Should such ever be the case, the desired end could best be attained through the agency of a Constitutional Convention called for that express purpose, as the sixty-day limit during which the Legislative Assembly can sit (Article V., section 5) would not be long enough to permit it to propose extensive revisions, alterations or amendments to the Constitution, and at the same time attend to its regular routine work and pass

all needed legislation. But where the desired revisions, alterations, amendments or changes are not extensive it would be the height of foolishness to call a Constitutional Convention, because of the enormous expense necessarily attached thereto, and hence in such cases the Legislative Assembly proposes the amendments, etc., directly, as we shall see when considering the next section.

The manner or process of revising, altering, amending or changing the Constitution through the agency of a Constitutional Convention, and of calling the same, is as follows:

If in the opinion of the Legislative Assembly a revision, amendment or change in the Constitution is necessary, it may by a two-thirds vote of all of the members elected to each house, not simply two-thirds of those present and voting, submit to the qualified electors of the state the question whether there shall or shall not be a Constitutional Convention called for the purpose of proposing amendments, alterations or changes in the Constitution. If at the next general election succeeding the proposing of such question it receives in its favor a majority of all votes cast for and against same, the Legislative Assembly must, at its next regular session, provide for the calling of such Constitutional Convention. The number of members of which the convention thus called shall consist shall be the same as that of the House of Representatives, and they shall be elected in the same manner, at the same places and in the same districts, but they shall have the same qualifications as are required of members of the state Senate (Article V., section 3). In calling the convention, the Legislative Assembly must also designate the day on which the election of its members shall take place, as well as the day, hour and place where such convention shall meet, which day, however, must be fixed within three months from the



time of holding such election; and in addition, the Legislative Assembly must in such call fix the pay of the members and officers of the convention, and provide for the payment of same, together with the necessary expenses. Vacancies in the convention are filled in the same manner as are vacancies occurring in the Legislative Assembly (Article V., section 45). Before the convention proceeds with its mission, its members must, however, take the usual oath of office. This convention, thus elected and called, must forthwith proceed to examine the Constitution carefully, determine in what respects it is defective and propose such revisions, alterations, amendments or changes to the same as may be deemed necessary. These must then be submitted to the electors for their ratification or rejection, at an election appointed by the convention for that purpose, which election must be held in not less than two nor more than six months after such convention adjourns. If at such election any or all of such proposed alterations, revisions or amendments are approved by a majority of the electors voting thereon, then same shall take effect immediately after the result is proclaimed by the Governor, but if any or all of them do not receive a majority of the votes thus cast, then those that did not shall be void and ineffective.

These provisions are very wise, for while they secure to the people the right to directly approve or reject all proposed amendments, alterations or changes in the fundamental law of the state, they at the same time afford sufficient time for the careful consideration of same, thus guarding against hasty action on the part of the people.

Thus far no Constitutional Convention has been called under this section. The only amendment made to this Constitution was made in the manner prescribed in the next succeeding section.

It must be borne in mind in this connection, however, that all revisions, alterations, amendments or changes made to the Constitution of Montana must not be repugnant to the Constitution, laws, treaties and judicial decisions of the United States. If they are, they are void and can never take effect, although otherwise legally proposed and adopted. If this were otherwise, the sovereignty of the United States could not be maintained and the whole structural work of national existence destroyed.

## SECTION 9.

### AMENDMENTS, HOW MADE.

Amendments to this Constitution may be proposed in either house of the Legislative Assembly; and if the same shall be voted for by two-thirds of the members elected to each house, such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals; and the Secretary of State shall cause the said amendment or amendments to be published in full in at least one newspaper in each county (if such there be) for three months previous to the next general election for members of the Legislative Assembly; and at said election the said amendment or amendments shall be submitted to the qualified electors of the state for their approval or rejection, and such as are approved by a majority of those voting thereon, shall become part of the Constitution. Should more amendments than one be submitted at the same election, they shall be so prepared or distinguished by numbers or otherwise that each can be voted upon separately; provided, however, that not more than three amendments to this Constitution shall be submitted at the same election.

When only slight or inextensive changes or amendments to the Constitution are desired, these can the best and most satisfactorily be brought about through the agency of the Legislative Assembly itself, instead of through the agency of a Constitutional Convention. Hence, in order that this end may be attained and secured, the foregoing section was inserted.

The process or mode of amending the Constitution through the Legislative Assembly is as follows, to-wit:

Either house may propose an amendment, and if the same is voted for by not less than two-thirds of all the members elected to each house, it must be submitted to the people for approval or rejection at the next general election for members of the Legislative Assembly, but during at least three months next prior to the time it is thus submitted, it is the duty of the Secretary of State to cause same to be continuously published in at least one newspaper in each county, if any such there be, in order that an ample opportunity may be given the people to think over and discuss the same. Should such amendment, thus proposed and submitted, receive in its favor a majority of all votes cast for and against the same at such general election, it shall go into effect and become part of the Constitution immediately after the result is announced by the Governor by public proclamation; otherwise, it shall be entirely void.

Should more than one amendment be submitted to the people at the same time, such amendments must be so arranged on the official ballot that each one can be voted upon separately. The reason for this is too apparent to need comment. But in no case can more than three proposed amendments be submitted by the Legislative Assembly to the people at the same time. If necessity demands that more than such number be submitted, a Constitutional Convention, whose exclusive business it is to look into such matters, should be called.

Thus far only one amendment has been adopted (see Article VIII., section 5), though several others have been proposed and lost.

## ARTICLE XX.

## CHANGE FROM TERRITORY TO STATE.

The provisions of this Article were inserted to prevent confusion or inconvenience from the changing of the territorial form of government to that of the state. As they are now of but little more than historical value, we have refrained from commenting thereon.

[Art. 20]





# INDEX

## TO

### UNITED STATES CONSTITUTION.

---

Abolition of Slavery.....	181
Absent Members.....	38
Accounts, Government.....	86
Accused, Rights of.....	139, 171
Adjournment of Congress.....	41, 125
Admiralty Cases.....	134
Admission of States.....	147
Agriculture, Secretary of.....	113
Aliens .....	57
Alliances, State, Forbidden.....	89
Ambassadors .....	124
Amendments, to Bills.....	45
To Constitution.....	154, 161
Appellate Jurisdiction.....	66, 188
Appointing Power.....	119, 122
Apportionment of Representation.....	20, 183
Appropriations .....	86
Arms, Right to Bear.....	164
Army, of States.....	73
Army, Regular.....	70
Articles of Confederation.....	5-8
Arrest, Privileged from.....	43
Assembly, Freedom of.....	162
Attainder, Bills of.....	82, 89
Attorney General.....	113
Ayes and Noes.....	40
Bail .....	176
Bankruptcy .....	59

	PAGE.
Bill of Rights.....	162-179
Bills for Raising Revenue.....	45
Bills of Credit.....	89
Bills, How Become Laws.....	46
Bills, where May Originate.....	45
Borrow, Congress May.....	54
Cabinet, the.....	116
Capitation Tax.....	20, 84
Captures .....	69
Census .....	22
Chief Justice.....	130
Circuit Court.....	65, 130
Circuit Court of Appeals.....	65, 130
Citizenship .....	57, 181
Civil Action.....	132
Civil Service Reform.....	121
Classification of Senators.....	28
Coinage .....	60, 89
Commander-in-Chief .....	111
Commerce, Regulation of.....	55, 86
Common Law.....	14, 134, 174
Concurrent Resolutions.....	49
Confederacy, United States, Not a.....	51, 145
Congress, Powers of.....	49-80
Composition of.....	13
Prohibitions Upon.....	80-89
Terms of.....	17, 36
Congressional Districts.....	35
Congressmen, Restraints on.....	44
Constitution, Objects of.....	10-13
Supremacy of.....	157
Consul .....	114
Continental Congress.....	4-10
Contracts, Obligation of.....	89
Convention, Constitutional .....	8
Controversies .....	131
Copyrights .....	63
Corruption of Blood.....	82, 142
Counsel for Accused.....	171

	PAGE.
Counterfeiting .....	61
Court of Claims.....	66, 135
Courts, U. S.....	65, 129
Court-Martial .....	72
Crimes, Trial of.....	139, 171, 174
Criminals, Fugitive .....	146
Criminals, Rights of.....	171
Debate, Freedom of.....	43
Debt, Public .....	54, 156, 186
Declaration of Independence.....	4, 191
Declaring War.....	68
Democracy .....	2
Departments, of Government.....	9, 10
Executive .....	94-128
Judicial .....	128-143
Legislative .....	13-94
Direct Taxes .....	20, 84
District Courts .....	66
District of Columbia.....	76
Districts, Congressional .....	35
Duties .....	52, 84
Elections .....	35, 100
Electors, Presidential .....	97
Voters .....	17
Eminent Domain, Right of.....	170
Enacting Clause.....	10
Equity, Cases in.....	132
Excises .....	53
Exclusive Powers of Congress.....	76
Executive Power, in Whom Vested.....	96
Executive Department.....	94-128
Exports, Duties on.....	52, 84
Ex Post Facto Laws.....	82, 89
Extradition of Criminals.....	114, 146
Extra Sessions.....	37, 124
Felony .....	66
Fines, Excessive.....	176
Forbidden Laws.....	80-94
Foreign Coin.....	60



	PAGE.
Forfeiture of Estate.....	82, 142
Freedom of Conscience.....	162
Of Assembly and Petition.....	162
Of Speech.....	162
Free Trade.....	52
Fugitive Criminals.....	146
Fugitive Slaves.....	147
Gerrymander .....	35
Government, Defined.....	1
Why Established.....	2
Grand Jury.....	167
Great Seal.....	114
Guaranties to States.....	152
Habeas Corpus, Writ of.....	81
High Seas.....	67
House of Representatives.....	16-25
Immunities of Congressmen.....	43
Impeachment .....	24, 33, 127
Implied Powers of Congress.....	97
Import Duties.....	52
Imposts .....	52
Indians .....	20
Indictment .....	168
Insurrection .....	73
Interior, Secretary of.....	113
Department of.....	115
Internal Revenue.....	52
International Law.....	67
Joint Resolutions.....	48
Journal of Each House.....	39
Judges, Terms of and Salary.....	130
Judicial Department.....	128-143
Jurisdiction of Courts.....	66, 131, 138
Jury, Grand.....	167
Petit .....	139, 168
Trial by, When.....	139, 171, 174
Justice, Department of.....	115
Law, Cases in.....	132
Due Process of.....	170

	PAGE.
The Supreme.....	157
Laws, How Made.....	46
Forbidden .....	80-94
Legal Tender.....	60, 89
Legislative Department.....	13-94
Letters of Marque, etc.....	69, 89
Message, President's.....	123
Militia .....	73, 111
Minister, Public.....	114
Money, Coin and Faper.....	60
National Supremacy.....	157
Nations, Law of.....	67
Natural Born Citizen.....	57
Naturalization .....	56
Navy .....	71
Department of.....	115
Secretary of.....	113
Negro Suffrage.....	183, 187
Nobility, Titles of.....	87, 89
Oath of Office.....	110, 158
Office, no Religious Test for.....	158
Original Jurisdiction.....	66-138
Pardons .....	111, 116, 184
Patents .....	63
Parliamentary Rules.....	39
People, Source of Power.....	2
Person, Security of.....	167
Petition, Right of.....	162
Petit Jury.....	139, 168
Piracy .....	66
Poll Tax.....	21, 84
Postmaster General.....	113
Postoffice Department.....	115
Postoffices and Postroads.....	62
Powers of Congress.....	49-80
Of Each House Separately.....	37
Of Nation Limited.....	49, 177
Preamble .....	10
Present from Foreign States.....	88

	PAGE.
Presentment .....	168
President, The—	
Election of.....	100
Powers and Duties of.....	111-127
Qualifications of.....	105
Term of, and Salary.....	96, 109
President the, of Senate.....	31
President Pro Tempore.....	32
Presidential Electors.....	97
Privateers .....	69
Prizes .....	69
Prohibitions on Congress.....	80-89
On the States.....	89-94
Property, Security of.....	167
Protection of States.....	152
Protective Tariff.....	52
Public Debt.....	54, 156, 186
Publicity .....	40
Qualifications of President.....	105
Of Representatives.....	18
Of Senators.....	30
Of Vice President.....	105
Of Voters.....	17
Quartering Soldiers.....	165
Quorum .....	38
Ratification of Amendments.....	154
Of Constitution.....	8, 9
Records, Congressional.....	40
State .....	143
Recognizing a Government.....	124
Reform, Civil Service.....	121
Regulation of Army and Navy.....	72
Of Coinage.....	60, 89
Of Commerce.....	55, 86
Religious Test for Office.....	158
Removals from Office.....	24, 33
Representation, Basis of.....	20, 183

Representatives—	PAGE.
Apportionment of.....	20, 183
How Chosen and Terms of.....	16
Number and Vacancies.....	22, 23
Qualifications of.....	18
Representatives, House of.....	16
Reprieves and Pardons.....	111, 116
Republican Government.....	2, 152
Repudiation .....	179
Reserved Rights.....	49, 177
Resolutions, Concurrent.....	49
Joint .....	48
Restrictions on Commerce.....	86
On Congressmen.....	44
Returns, Election.....	37
Revenue .....	51
Rules of Each House.....	39
Salary .....	43, 109, 131
Searches and Seizures.....	166
Senators, Classification of.....	28
How Chosen and Terms of.....	25
Qualifications of.....	30
Senate, The.....	25-35
Vacancies in.....	28
Slavery .....	80, 181
Speaker of House.....	24
Speech, Freedom of.....	162
State, Department of.....	113
State Records.....	143
Repudiation .....	179
State, Secretary of.....	113
States, Commerce Between.....	55, 86
Form of Government.....	152
New, Admission of.....	147
Prohibitions on.....	89-94
Protection of, by U. S.....	152
Relations of.....	145
Succession to Presidency.....	107
Suffrage .....	17, 187



	PAGE.
Supremacy of Nation.....	157
Supreme Court.....	129
Tariff .....	52
Taxation .....	20, 51
Tender, Legal.....	60
Territories .....	150
Titles of Nobility.....	87, 89
Tonnage Duties.....	91
Treason, High.....	140-142
Treasury, Department of.....	114
Secretary of.....	113
Treaties, How Made.....	89, 118
Trial .....	139, 171, 174
Troops, Forbidden to States .....	91
U. S. Courts.....	65, 129
U. S., A Nation.....	11, 51, 145
Vacancies, in House.....	23
In Presidency.....	107
In Senate.....	28
Veto of President.....	46
Vice President.....	31
Election of.....	100
Qualifications of.....	105
Volunteers .....	74
Voters, Qualifications of.....	17
War, Department of.....	114
Forbidden to States.....	91
Power to Declare.....	68
Secretary of.....	113
Weights and Measures .....	60
Witness .....	167
Yeas and Nays.....	40

# INDEX

TO

## MONTANA CONSTITUTION AND CIVIL GOVERNMENT.

	PAGE.
Accused, Rights of.....	31, 34
Acting Governor.....	82
Adjournment .....	58
Administrators, Public.....	160
Agricultural College.....	148
Aliens, Rights of.....	40
Amendments to Bills.....	67, 72
To Constitution.....	168-172
Appointing Power.....	94
Apportionment .....	48, 82-85
Appropriations .....	72-73
Arms, Right to Bear.....	27
Arrest, Privilege from.....	59, 141
Assembly, Freedom of.....	41
Legislative .....	45
Assessor, County .....	160
Attainder, Bills of.....	22
Attorney General .....	86, 91
Auditor, State .....	86, 91
Authentication .....	106-107
Ayes and Noes.....	57
Bail .....	35
Bill, All Laws by.....	63
Bills, Where Must Originate.....	72
How Become Laws.....	101
Boards, State .....	88, 108
Boundaries of State.....	7
How Changed .....	7

	PAGE.
Bribery .....	79-81
Census, State .....	83
Certiorari, Writ of.....	113
Charitable Institutions .....	147
Cities .....	160
Civil Actions .....	132
Civil Townships .....	161
Clerk of Court, District.....	125
Supreme .....	119
Clerk and Recorder, County.....	160
Commander-in-Chief .....	94
Common Schools .....	148-151
Contracts, The Obligation of.....	25
Conscience, Freedom of.....	13
Congressional Township .....	161
Commutation .....	97
Concurrent Jurisdiction.....	113-128
Resolutions .....	78
Constable .....	161
Contempt .....	54
Convocation of Assembly.....	50
Coroner .....	160
Corporations, Private .....	157
Public .....	159-162
Council, City and Town.....	161
Counsel for Accused.....	31
Counties .....	159
County Attorney .....	62, 125
Auditor .....	160
Clerk and Recorder.....	160
County Commissioners .....	159
Superintendent .....	160
Surveyor .....	160
Treasurer .....	160
Courts, of State.....	110
Criminal Action .....	31
Deaf and Dumb Asylum.....	147
Debt, Imprisonment for.....	26
Municipal .....	76, 155
State .....	77, 154

	PAGE.
Declaration of Rights.....	9-45
Departments of Government.....	45
District Courts .....	110, 120-125
Divorces, by Legislature.....	68
Education .....	148-151
Educational Institutions .....	147
Electors, Who Are.....	139
Eminent Domain .....	28, 29
Error, Writ of.....	114, 123
Escheats .....	149
Examiner, State .....	96
Executive, Chief .....	93
Executive Department .....	86-110
Exemption Laws .....	165
Ex Post Facto Laws.....	25
Expulsion of Legislators.....	54
Extra Sessions .....	50, 100
Finance .....	154-156
Fines, Excessive, Forbidden.....	35
Forfeiture of Estate.....	23
Freedom of Assembly.....	41
Of Religion .....	13
Of Speech .....	23
Government, State, Why Established.....	3
Governor, Powers and Duties of.....	93-104
Qualifications of .....	91
Salary of .....	92
Vacancies in Office of.....	104-106
Great Seal of Montana.....	106
Habeas Corpus, Writ of.....	36, 112
Highways .....	28, 29
House of Representatives.....	45
Impeachment .....	60, 61
Imprisonment for Crime.....	43
For Debt .....	26
Information .....	20
Indictment .....	20
Injunction, Writ of.....	114
Insane Asylum .....	147



	PAGE.
Joint Resolution .....	64
Journal, Each House to Keep.....	56
Judges of District Court.....	122-124
Qualifications of.....	124
Judge Pro Tempore.....	137
Judicial Department .....	110-138
Jurisdiction, Appellate .....	111, 129
Concurrent .....	113, 128
Original .....	111, 120
Jury, Grand .....	20
Petit .....	20
Trial by .....	31, 38
Justices of the Peace.....	126-129
Justices of the Supreme Court.....	116
Qualifications of .....	120
Labor Commissioner .....	163
Law-Making .....	63-69
Law, Due Process of.....	42
Laws, Style of.....	64
How Passed .....	67
Publication of.....	65
Legislative Department .....	45-82
Legislative Assembly .....	45
Number of Members.....	47
Privileges of Members.....	59
Libel .....	23
Lieutenant Governor .....	52, 86
Powers and Duties of.....	52, 105
Qualifications of .....	91
Salary of .....	92
Lotteries, Forbidden .....	165
Mandamus, Writ of.....	112
Military Subordination .....	37
Militia .....	94, 156
Mines, School of.....	148
Miscellaneous Provisions .....	164-184
Montana, Admission of.....	3, 7
Boundaries of .....	7
Municipal Corporations .....	159-162

	PAGE.
Normal School, State.....	148
Oath of Office.....	164
Objects of Constitution.....	6
Office, No Religious Test for.....	13
Officers, Judicial.....	110-120
Legislative .....	45
Municipal .....	160-161
State .....	86
Pardoning Power .....	97
Penitentiary, State .....	148
Person, Security of.....	17
Permanent School Fund.....	149
Persons, Rights of.....	12, 42
People, Source of Power.....	1, 5, 10
Petition, Right of.....	41
Police Courts .....	130
Preamble .....	5
President, of Senate.....	52, 105
Pro Tempore .....	52, 106
Privileges of Legislators.....	59
Printing, State .....	71
Property, Security of.....	17
Public Institutions .....	147
Publicity .....	57
Qualifications of Voters.....	139
Quartering Soldiers.....	37
Quorum .....	53
Quo Warranto, Writ of.....	113
Religious Freedom.....	13
Removal of Officers.....	60-63
Representatives, State .....	45
Reprieves .....	97
Rights, Conventional .....	13
Reserved .....	44
Inherent .....	13
Restrictions on Legislators.....	51
Salary .....	49, 92, 133
Schools, Common .....	148, 151

	PAGE.
School Board .....	150
District .....	150
Fund .....	149
Searches and Seizures.....	17
Secretary of State.....	86
Sectarian Instruction .....	150
Senate, State .....	45
Senators, State .....	45
Sessions, Regular .....	50
Special .....	50, 100
Sheriff .....	160
Slavery Prohibited .....	43
Speaker of House.....	52, 106
Special Legislation .....	25, 68, 131
State Auditor .....	86
State University .....	148
Reform School .....	148
Subordination, Military .....	37
Succession to Governor.....	105-106
Suffrage .....	15, 138-147
Superintendent, State .....	86
Supreme Court .....	110
Jurisdiction of .....	111
Taxation .....	152-154
Terms of Court.....	115, 120, 129
Trial .....	31, 38
Towns .....	160
Townships .....	161
Treason .....	22
Treasurer, State .....	86
Vacancies .....	81, 104-106, 136
Venue, Change of.....	32
Veto .....	101-103
Voters, Who Are.....	139
War Debt .....	154
Water Rights .....	29
Writs .....	111









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